United States Court of Appeals
for the Second Circuit

APPENDIX

77-7037

B

In The

United States Court of Appeals

For The Second Circuit

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NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FILED
AUG 8 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX - VOLUME 5

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PAGINATION AS IN ORIGINAL COPY

credit information was received by First National City Bank. They denied it and they did so because we were not a franchised car dealer.

Now that is substantiated by --

THE COURT: Well, how are we going to get aided, Mr. Person, on that claim if we find out the compensating balance?

MR. PERSON: Because he told us, he told Mr. Maiorana, Mr. Giles, that the reason they did it was they had dealer complaints, he actually admitted that he had talked with some dealers that were named in our case but did not say that he had talked about Nabcor but said that it was in order to protect the dealers, they wouldn't give us financing, we came back for a second cut with a new manager and we got an immediate refusal this time based upon an allegedly atrocious credit report which one day after they refused us they found out wasn't true at all and did nothing to correct the situation. There is certainly enough to go before a jury and I would like to have the additional information of the relationship with GM to show why they are doing it. Furthermore, they won't give any financing to used car dealers --

THE WITNESS: Can I just cut it off?

Could you give the compensating balance

as of that moment or the mutual balances or whatever?

MR. KLEINBARD: Well, your Honor, before I answer that, according to Mr. Person's statement he is saying that dealers went and said this. He hasn't said anything relating to us so far.

THE COURT: No, but he is saying that --

MR. KLEINBARD: He is saying we had a business relationship with City Bank which I don't deny and presumably with 22 other institutions but as your Honor quite correctly said that is probative really of nothing.

THE COURT: I am just asking, I would wonder if --

MR. KLEINBARD: And the other problem is we don't want broadcast all over the country what our compensating balances are with 22 banks.

THE COURT: How about with this one bank at that one time? Frankly, Mr. Person, I don't like it, but I think that your case to the extent you have a case about First National City Bank depends entirely, begins and ends with the kind of evidence you are talking about. And this compensating balance thing is just the merest coloration, if anything, it hardly adds or subtracts. You might want it and you might want to talk to a jury about it but without the other evidence it is nothing. And with the other evidence it doesn't add anything.

MR. PERSON: But it can lead us to people who may in fact have said not to provide the financing.

THE COURT: How could it lead there?

MR. PERSON: Because the people who are in charge of the compensating balances who indicate -- you see our theory is that the loans that are given out for new cars are at such a low level that there is no interest in making new car loans at all. As evidenced by the policy of City Bank not to give any used car loans to used car dealers, and they even limit the amount of used car loans to franchised dealers. Now with that policy in not wanting used car loans they come up with new cars loans at a very low rate.

THE COURT: Would General Motors concede that as of the date of the one credit refusal or the second credit refusal or both -- would you concede that General Motors had a substantial bank account- a substantial balance in the First National City Bank?

MR. KLEINBARD: I think we would concde that we maintaining compensating balances there, your Honor, yes.

THE COURT: Of substantial amounts?

MR. KLEINBARD: I don't know. I have to find that out.

THE COURT: I am not going to require you to disclose the amount but I think you will concede that you are a customer, you had deposits in the First National City Bank, we can get the necessary information without getting into the specifics.

MR. PERSON: Your Honor, may I just tie in this thing for one second? I don't think I made the point clear enough and that is that the compensating balance is an interest free deposit by GM with City Bank. We are saying that this interest free deposit is actually being committed to the new car loans being made by City Bank to franchise dealers.

Since we weren't franchised City Bank couldn't apply it to our loans.

THE COURT: We could get the necessary information without getting that particular interrogatory answered, and there will be enough, if you have got any case at all and it is necessary to go to the jury -- all I am saying to General Motors, if it goes to the jury and if it is relevant to find out information about balances as of those dates, I am sure you can get it and --

MR. KLEINBARD: Well, I will undertake to find out the answers to the questions your Honor put. I would suggest with respect to Mr. Person's problem that he first, when he is finished with the First National City and he has

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finally finished his depositions and so forth, if he will present that evidence to your Honor then let your Honor decide whether we should go forward. Becuase it relates not only to this interrogatory but interrogatories 19 through 27, it's a whole group of interrogatories, that all relate to all kinds of financial information. One definition is absolutely --

THE COURT: Haven't we taken care of 18?

MR. KLEINBARD: Yes.

THE COURT: I am striking 18.

MR. KLEINBARD: I say the same ruling would apply right through 27 and indeed I don't understand his definition of compensating balance and I don't think anybody else will either.

MR. PERSON: Well, read it.

MR. KLEINBARD: I will be glad to read it. Compensating balance includes whatis considered by you or any of the banks, that is 22 of them, to be a compensating balance as well as any deposit with any of the banks or any subsidiary or affiliate thereof --

THE COURT: Well, excuse me, Mr. Kleinbard. On 19 was there somebody, was there a contact that General Motors had with the City Bank? Could we get that name?

MR. KLEINBARD: Well, again on all -- any

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contact with the City Bank I will have to ask, I would be surprised the City Bank being a large institution if we had -- if there was a single contact. Certainly didn't have contacts with him about Nabcor, I am sure.

MR. PERSON: The compensating balance.

THE COURT: No, I am getting at something else. I wonder if you could identify -- I can easily concede that you could have many transactions and many people in communication with a bank like that. I am wondering if there was one person, and this doesn't mean -- I am not ruling that he is going to be a witness or even deposed, I don'tknow because I don't see clearly the City Bank claim at the present moment but just to get through this phase I am wondering if you could not identify the one or two people who might have dealt with City Bank on the subject of compensating balances during '66 and '67. That is a finite period of time and it is a limited subject and I will ask to answer interrogatory 19 to that extent and that extent only.

Now let us go to 20. 20 I will strike because I have asked GM to --

MR. KLEINBARD: You have given me that request.

THE COURT: 21, that is stricken. Objection sustained. 22.

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MR. KLEINBARD: If you will look --

THE COURT: Excuse me just one second.

MR. KLEINBARD: This has nothing to do with City Bank, your Honor.

THE COURT: I don't understand 22 at all.

MR.KLEINBARD: And if you look at the definition, your Honor --

THE COURT: What is the point of 22, Mr. Person?

MR. PERSON: The point is that the finance company which are subsidiaries of GM and Ford have had a practice of charging less than a prevailing rate of interest so that they are giving away the cars on financing terms which are really at a discount. The result of that is that the banks have had to give a lower rate also, which lowe rate has to be made up with a compensating balance. Otherwise the banks wouldn't even give loans. We found that a lot of independent finance companies went out of business and as a result Nabcor couldn't get any financing. We now believe that it was because of these compensating balances which banks get, but CIT and the other finance companies could not get in order to make them competitive with the financing subsidiaries of Ford and GM.

THE COURT: How does that relate to your case?

MR. PERSON: Because we were excluded by

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these finance companies.

THE COURT: This is so indirect. At the end of the line after you have established something else if this is relevant we can get into this. But this is terribly remote now.

MR. PERSON: This is a sophisticated system, your Honor, and we are trying to point out where the areas are that have prevented us. We know that Ford and GMAC --

THE COURT: No, I am just not going to have it. Interrogatory 22, the objection is sustained.

MR. KLEINBARD:On 23, I think we have really touched on it again to the extent that your Honor is disposed to grant it, it just goes into more detail.

THE COURT: Well, the question Iasked you earlier will --

MR. KLEINBARD: It will cover this one, I think, your Honor.

THE COURT: So 23 is stricken except for the question I asked earlier.

MR.KLEINBARD: Right.

THE COURT: Next.

MR. KLEINBARD: I think perhaps we can do the last three. Well now, this asks what amount, what stock ownership we have in City Bank and other banks and to break it down by months and God knows what else. Again I see it as an end of the road type question if we ever get that far. And again it is merely indicative of a business relationship not probative of any boycott conspiracy or anything. And again confidentially I would think to some extent.

THE COURT: This is fantastic. Suppose City Bank as trustee holds General Motors stock?

MR. PERSON: It also represents a control factor.

THE COURT: This is just beyond the Nabcor case and I am not going to -- we are just not going to have this kind of information dragged into this case. That is all there is to it.

Interrogatory 24, the objection is sustained. Let me just look at these.

MR. KLEINBARD: There are three more I think on this banking subject, your Honor. I know you are going over your time that you have scheduled to us. That is 25, 26 and 27,again I don't see what they have to do with this particular case.

THE COURT: Well, we get into other subjects, we get into other kinds of institutions. I am going to strike and sustain the objections to 25, 26, 27 and 28.

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If this were a major horizontal conspiracy case of a different kind, or something else then we might start by learning all about the different relationships you are asking about. But just isn't that kind of a case.

MR. PERSON: We have had 20 refusals by banks, your Honor, so that we do think it is that kind of a case and this is the remaining bank because it is the only one in the juriddiction other than County Trust Company which we had released from the case.

THE COURT: I repeat, you demonstrate to me something which would really make it relevant to present to the jury all the information about normal expected business relationships and I will certainly let you present it and get it. But just don't -- it is not here now.

MR. PERSON: Your Honor, if I can demonstrate that the interest rates which the bank is giving out for new car loans is unrealistic in light of market conditions and would have to be subsidized in some way then I think that is where our compensating balance comes in as a subsidy of GM to City Bank for the purpose of making new car loans to the customers at lower rates than the prevailing market rate. We are not part of the GM system. Therefore, Cith Bank did not make those loans available to us. That is our point.

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THE COURT: Well, we have got to cover a lot before we get to that.

MR. PERSON: Could we have a meeting on the City Bank, your Honor? I think we can --

THE COURT: Yes, I do think we need one. That is fine. And I would like to know what you have uncovered on City Bank in much more detail.

MR. PERSON: Are you interested in our allegations as well? In other words, I have testimony that will --

THE COURT: I would like to know what has been discovered in the discovery about City Bank and I would like to know what the Nabcor people claim was done to them by City Bank and I would liek to hear what testimony there would be and there is about what City Bank did and why they did it and so forth. Obviously.

Now what about 29? Is that objected to?

MR. KLEINBARD: Yes, your Honor. This goes into the destination charges and transshipment. We are going to produce the policy documents outlining the reasons for that in accordance with your Honor's direction or suggestion at one of our earlier sessions, outlining the reasons for the present destination charge system the reasons for the most recent change and the manner in which the destination charge is calculated. And we feel that that is a sufficient compliance with this particular interrogatory particularly since you have limited the destination charge counts to the transshipment, namely that the automobile manufacturers conspired to adopt a destination charge system, the effect of which was to prevent Nabcor from transshipping. Many of the questions go to things like phantom freight and so forth are no longer relevant to the case and it would appear to me that Mr. Person ought to read those documents first before we have to fun through 30 to 32 and 35 throuth 52, all these interrogatories bearing on destination charges,most of which I think are irrelevant. We are going to get the policy documents and whatever claim he can make on that he can make.

MR. PERSON: I doubt if the policy documents answers each of these questions.

MR. KLEINBARD: It is awfully hard to decide that before you read them.

THE COURT: Have the documents been produced?

MR. KLEINBARD: Well, they will be on Monday. They were delayed, they were supposed to arrive today, your Honor, and the courier did not arrive. I don't know why but we have arranged to get them by Monday.

THE COURT: How many interrogatories have you got relating to the destination charge?

MR. KLEINBARD: Well, it is 3 and --

THE COURT: We will start with 29.

MR. KLEINBARD: Yes. Yes. That is right.

THE COURT: 29 through 32 and -- and 35 through 52.

MR. KLEINBARD: That is a big chunk to go through in advance --

THE COURT: Well, I will tell you I haven't gone overthis. I don't know. I do have a reaction and that is that the interrogatories on destination charges I think should be deferred. I would expect that the whole quesetion of discovery on destination charges should be deferred. I am sure that it is -- well, I don't know but I think we have got to concentrate on disposing of the boycott claims and I don't want to get into problems about the destination charge now, it is a narrow and peripheral part of the case now and I am not going to get into it. So I would ask you to defer that subject. Now, which takes us to what? Interrogatory 53? fleets.

THE COURT: How many more interrogatories? What is therel another 50?

MR. KLEINBARD: There is quite a loot, your Honor. There are a hundred and --

THE COURT: Well, I am afraid I can't stay any longer.

MR. KLEINBARD: Some 106 I think there are. Yes.

THE COURT: All right.

We will just have to have another meeting. All right, that is all.

(Time noted: 5:35 p.m.)

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SCHEDULE A

Name of Witness or Defendant	Date and Time of Examination
Defendant THE BETTER BUSINESS BUREAU OF METROPOLITAN NEW YORK, INC.	
Name or Description of Officers or Managing Agents of Defendant The Better Business Bureau of Metropolitan New York, Inc. to be Examined:	
LOUIS SISAPEL	November 22, 1974 10:00 a.m.
W. RICHARD BRUNER	November 25, 1974 10:00 a.m.
JOEL A. DOLCI	December 6, 1974 10:00 a.m.
and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or described in ¶¶ 1-4 of Schedule B hereto.	
LOUIS C. TROISE Last-Known Address 71-45 68th Place Glendale, New York	November 18, 1974 10:00 a.m.
LOUIS SISAPEL Last-Known Address: The Better Business Bureau of Metropolitan New York, Inc. 110 Fifth Avenue New York, New York	November 22, 1974 10:00 a.m.
W. RICHARD BRUNER Last-Known Address: The Better Business Bureau of Metropolitan New York, Inc. 110 Fifth Avenue New York, New York	November 25, 1974 10:00 a.m.
JOEL A. DOLCI Last Known Address: The Better Business Bureau of Metropolitan New York, Inc. 110 Fifth Avenue New York, New York	December 6, 1974 10:00 a.m.

Name of Witness or Defendant (Cont'd)	Date and Time of Examination
GREATER NEW YORK LONG ISLAND & WESTCHESTER AUTOMOBILE DEALERS ASSOCIATION, INC. Last Known Address: Hotel Granada 268 Ashland Place Brooklyn, New York	
Name or Description of Officers or Managing Agents of Witness Greater New York, Long Island & Westchester Automobile Dealers Association, Inc. to be Examined:	
PETER A. GORDON, Executive Vice President	December 4, 1974 10:00 a.m.
and by any officers or managing agents having knowledge or information now known to any of the officers or managing agents properly designated above relating to any of the matters described in §§ 1-4 of Schedule B hereto.	
PETER A. GORDON Last-Known Address: Greater New York Long Island & Westchester Automobile Dealers Association Inc. Hotel Granada 268 Ashland Place Brooklyn, New York	December 4, 1974 10:00 a.m.
Defendant NATIONAL BETTER BUSINESS BUREAU	
Name or Description of Officers or Managing Agents of Defendant National Better Business Bureau to be Examined:	
Van Miller, President	November 20, 1974 10:00 a.m.
Allan E. Bachman Vice President	November 27, 1974 10:00 a.m.
and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or described in §§ 1-4 of Schedule B hereto.	

Name of Witness or Deponent (Cont'd)	Date and Time of Examination
VAN MILLER Last Known Address: National Better Business Bureau 845 Third Avenue New York, New York	November 20, 1974 10:00 a.m.
ALLAN E. BACHMAN Last-Known Address: National Better Business Bureau 845 Third Avenue New York, New York	November 27, 1974 10:00 a.m.
ASSOCIATION OF BETTER BUSINESS BUREAUS INTERNATIONAL Chrysler Building 161 E. 42nd Street New York, New York 10017	
Name or Description of Officers or Managing Agents of Witness Association of Better Business Bureaus International to be Examined:	
VICTOR H. NYBORG, President	November 29, 1974 10:00 a.m.
THOMAS C. ROBERTS, Vice President	December 2, 1974 10:00 a.m.
and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters described in ¶¶ 1-4 of Schedule B hereto.	
VICTOR H. NYBORG Last-Known Address: Association of Better Business Bureaus International Chrysler Building 161 E. 42nd Street New York, New York 10017	November 29, 1974 10:00 a.m.
THOMAS C. ROBERTS Last-Known Address: Association of Better Business Bureaus International 1729 H Street, N.W. Washington, D.C.	December 2, 1974 10:00 a.m.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

70 Civ. 5421A (TPG)

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

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These are the further responses of defendant, General Motors Corporation ("GM") to plaintiff's interrogatories addressed to the four automobile manufacturer defendants, dated July 19, 1974.

For the convenience of the Court, we have set out the text of each interrogatory before each answer and have begun each interrogatory on a new page.

Interrogatory No. 14

Identify each of the following persons:

A. (TO BE ANSWERED BY GM ONLY):

1. James M. Roche, Chairman of the Board;
2. Frederik G. Donner, Chairman of the Board;
3. Edward P. Belcher, Staff Assistant, Office of Chairman;
4. the GM officials in Detroit with whom Mr. Belcher had numerous telephone conversations about Nabcor and a fleet certificate for Nabcor during January 1968;
5. Pete Williamson, Staff Assistant, Office of Chairman;
6. Mr. Drury, GMAC, New York;
7. Mr. K. C. Womack, Buffalo Chevrolet Zone Manager;
8. Mr. English, Buffalo Chevrolet Zone, Assistant Manager;
9. Mr. Lowe, Washington, D.C. Chevrolet Zone Manager;
10. David Spiece, Philadelphia Chevrolet Zone Manager;
11. Jack Douglas, New York Chevrolet Zone Manager;
12. the Buick Zone official in Philadelphia to whom Jack Douglas spoke about Nabcor during 1968;
13. N. M. Karney, New York Regional Director, Fleet Section;
14. the 2 Chevrolet officials or employees in New York, Broadway & 56th St. office, to whom N. M. Karney took Frank Maiorana in January 1967;
15. Robert M. De Simone, Fleet Manager, Philadelphia Zone;
16. Walter Gray, New York Pontiac Fleet Manager;

17. George Ziebout, Foreign Sales Dept., New York;

18. Walter Englert, Fleet Sales, Midtown Chevrolet, New York;

19. Mr. Englert's superior who spoke with Frank Maiorana by telephone during January 1967;

20. the Zone Manager, Assistant Zone Manager and District Zone Manager for the area covering Ruckle Pontiac who during October 1966 met with Frank Maiorana at the bar in the Park Sheraton Hotel at 56th and 7th Avenue, New York;

21. the Pontiac factory official who met with Robert Dillon of Ruckle Pontiac at Dillon's home on a weekend in January 1967, approximately;

22. the 2 Zone Managers for Oldsmobile and Chevrolet who, on separate occasions during 1968, spoke with Moe Cerota of Cerota Chevrolet-Oldsmobile in Elmer, N. J. about Nabcor;

23. Raymond Kane, GMAC officer in Paterson, N.J.;

24. Hank Thomas, GMAC, Philadelphia;

25. Grover Durham, Buick District Manager in Philadelphia;

26. the Buick representatives at the meeting of the association of Buick dealers in the Philadelphia Zone during the 1st week of February 1970;

27. Eugene Tanz of Katz (?) & Tanz; a public relations firm representing the Buick Zone at the meeting described in the preceding paragraph;

28. the Zone Manager, Roadman and Fleet Manager and other officials who spoke with Rohrer Chevrolet (in Camden, N.J.) about Nabcor at Rohrer's office and elsewhere during September 1970;

29. the Zone Manager and Roadman for the Cadillac Zone covering the area including Marty Motors of Yonkers, N.Y. who, during April or May 1968 spoke with Frank Ripperger and John Montabano about Nabcor;

30. The Pontiac Zone representative for Kellman Pontiac in Hightstown, N.J. who during August 1969 spoke with Mr. Kellman about Nabcor;

31. the Pontiac Zone official for Al Wilson Pontiac, located in Hatboro, Pa., who on February 22, 1968 spoke with Mr. Wilson about Nabcor;

32. R. D. Coulter, Manager, Organization & Analysis Department, Pontiac, Michigan;

33. John H. Harwood, National Customer Relations Manager of Pontiac;

34. Mr. B. R. Everett, Pontiac Tax & Insurance Department, Pontiac, Michigan;

35. Vincent A. McCabe, Zone Manager;

36. R. W. Redmond, Buffalo Zone, Zone Service and Parts Manager;

37. C. D. Clar, Pontiac Buffalo Zone, Customer Relations Manager;

38. P. H. Harrington, Pontiac Office, Manager & Car Distribution;

39. John Rock, Director, Fleet & Government Sales Section;

40. Mr. Owens, referred to in letter of N. M. Karney dated 3/29/66;

41. R. M. O'Connor of GM;

42. P. J. Wetzel of GM Public Relations Staff, N.Y.;

43. R. L. Berg, Director, Fleet & Government Sales Section;

44. Chuck Church, Oldsmobile Division, Lansing, Michigan;

45. the Regional Manager who brought Nabcor to the attention of Mr. Church, as stated in 12/14/66(?) memo of a telephone conversation with Mr. Church;

46. James B. Buckland, Office Manager and Products Distributor, Pontiac, Bala Cynwyd;

47. W. J. Brooks, Jr., Pontiac, Michigan, Fleet Sales, Administrative Assistant;

48. Walter Johnson, Pontiac;

49. G. P. Prodromos, Pontiac Fleet Manager, Philadelphia Zone;

50. Carl E. Michael, Pontiac Eastern Region;

51. G. B. Hogan, Pontiac Fleet Sales Dept.;

52. Mr. J. P. Ware, Philadelphia Zone Manager, Pontiac;

53. Mr. L. J. Dupree, Pontiac, Michigan;

54. Mr. Jack E. Simmers, Philadelphia Zone, Office Manager and Car Distributor;

55. Don Miller, Pontiac Zone;

56. W. Johnson, Fleet Dept.;

57. Mr. Gerald J. Burt, Pontiac Philadelphia Zone;

58. J. W. Johnston, Fleet, Pontiac;

59. Mr. L. W. Miller, Accounts Receivable (Pontiac);

60. Richard K. Moberg, Customer Relations Manager, Buick Motor Division, Fort Washington, Pa.;

61. L. D. Robbins, Buick, Flint, Manager, Owner Relations;

62. Richard K. Mobey, Buick Owner Relations Manager;

63. R. W. Jeffers, Buick;

64. James Kurzen, Customer Relations Manager, Pontiac, Philadelphia office;

65. Willis E. Hames, Pontiac, Michigan, Assistant General Service Manager;

66. Mr. J. S. Walker, Pontiac, Michigan;

67. R. M. O'Connor;

68. R. E. Bradley, Dayton, Ohio, Assistant Branch Manager, GMAC;

69. G. F. Kerr, Director, Special Financing, Executive Office;

70. A. K. Pringle, Regional Manager;

71. R. R. Dykstra, Manager, Dayton;

72. R. R. Nelson;

73. S. E. Johnson, Vice President;

74. F. Connolly, Assistant Branch Manager, Philadelphia Branch;

75. D. L. Dooley, Executive Office, Leases, Fleet & Specialist Financing;

76. J. Higgins;

77. V. Jertson, Detroit TEF;

78. Mr. C. McCrary, Manager, Chevrolet Sales Finance;

79. Mr. G. P. Davey, Jr., Manager, Detroit TEF;

80. Mr. J. C. Thedes, GMC legal staff;

81. Mr. E. J. Smith;

82. Mr. W. K. Laughlin, Buick Motor Division;

83. D. E. Nelson, Assistant Finance Manager and Vice President, Executive Office;

84. G. E. Geier, Oldsmobile Division;

85. Mr. A. J. Felton, Vice President;

86. Mr. T. P. Wallace, Resident Comptroller, Flint, Michigan;

87. T. L. Swope, Zone Organization Manager, Buffalo;

88. Mr. Dunham, GM Fleet;

89. R. Lee Courthey, Assistant Manager, Fleet Sales Dept.;

90. J. J. Musselman, Jr., Philadelphia Chevrolet;

91. F. V. Blesse, Detroit TEF;

92. H. L. Busch, Divisional Comptroller;

93. W. Kuck, General Supervisor Accounts Receivable;

94. Mr. W. H. Gordon, Jr., Philadelphia Cadillac Zone, Manager;

95. Hubert B. Dupuis, Zone Produce Distributor, Philadelphia Cadillac Zone;

96. Albert E. Collier, National Distribution Manager for Cadillac;

97. George Frank.

Answer to Interrogatory No. 14

1. James M. Roche - Retired 12/31/71
   Bloomfield Hills, Michigan;

2. Frederic G. Donner - Retired 10/31/67
   Room 2550, 630 Fifth Avenue, New York, N.Y.;

3. Edward P. Belcher, General Motors Corporation, Detroit, Michigan;

4. H. P. Sattler - Retired 12/31/68
   Grosse Pointe Shores, Michigan;

5. Peter Williamson, General Motors Corporation, New York, New York;

6. W. R. Drury - Retired
   White Plains, New York;

7. Ken C. Womack - Retired 12/31/72
   Tarpon Springs, Florida;

8. R. G. English, Chevrolet Motor Division, Buffalo, New York;

9. John P. Lowe, Chevrolet Motor Division, Baltimore, Maryland;

10. David Spiece - Deceased;

11. No record of the person to whom the plaintiff refers;

12. No record of the person to whom the plaintiff refers;

13. N. M. Karney, General Motors Corporation, Detroit, Michigan;

14. Mr. Karney has no present recollection of any meeting taking place in January 1967;

15. Robert M. DiSimone - Retired 4/30/74 Dennis, Massachusetts;

16. Walter Gray - Separated September 1969;

17. No record of the person to whom the plaintiff refers;

18. Walter J. Englert, Midtown Chevrolet, New York, N.Y.;

19. General Motors is unable to identify to whom the plaintiff has referred;

20. General Motors is unable to identify the persons to whom plaintiff refers. However, W. P. Holzworth (separated) was the Zone Manager, W. T. Ekhart (retired) Assistant Zone Manager, and Tom McMahon, the District Manager for the area at that time;

21. From the description given, General Motors is unable to identify the person to whom the plaintiff refers;

22. Defendant General Motors has no knowledge to whom the plaintiff refers. However, the Zone Manager for Oldsmobile Division in 1968 for the Philadelphia Zone was Donald T. Salmeri, Oldsmobile Division, Indianapolis, Indiana. The Zone Manager for Chevrolet Motor Division for the Philadelphia Zone, which includes Elmer, N.J., was R. H. Schmittdiel, Jr.

23. Raymond Kane - Deceased;

24. H. G. Thomas, General Motors Acceptance Corporation, Trenton, N.J.;

25. General Motors is unable to identify the person(s) to whom plaintiff refers.

26. General Motors is unable to identify with certainty who, if anyone, from Buick Motor Division was present at the meeting referred to in this interrogatory;

27. Buick Motor Division has no record of any Eugene Tanz ever representing Buick Motor Division;

28. General Motors is unable to identify the persons to whom plaintiff refers. However, Mr. Schmittdiel (22 above) was the Philadelphia Zone Manager, Mr. Spiece (10 above) and J. Scollard, the Fleet Managers and Mr. John Richards the District Manager there at the time;

29. General Motors is unable to identify the Zone Manager or District Manager to whom plaintiff refers. However, the District Manager at that time for Yonkers, N.Y. was T. W. Curran;

30. General Motors is unable to identify the person to whom plaintiff refers. However, John R. Davis was the District Manager for the area including Heightstown, N.J. in 1966;

31. General Motors is unable to identify the person to whom plaintiff refers. However, Jack Simmons was the District Manager for Hatboro, Pa. in 1968;

32. R. D. Coulter - Disability Leave of Absence effective 3/1/74 - Germantown, Tenn.;

33. John H. Harwood - Retired 3/31/74;

34. B. R. Everett, Pontiac Motor Division, Pontiac, Michigan;

35. Vincent A. McCabe, Pontiac Motor Division, Milwaukee, Wisconsin;

36. R. W. Redmond, Pontiac Motor Division, Buffalo, N.Y.;

37. C. D. Clark, Pontiac Motor Division, Buffalo, N.Y.;

38. P. H. Harrington - Separated in 1973;

39. John Rock, Buick Motor Division, White Plains, N.Y.;

40. J. J. Owens, Chevrolet Motor Division, Washington, D.C.;

41. R. M. O'Connor, Chevrolet Motor Division, Detroit, Michigan;

42. P. J. Wetzel, General Motors Corporation, Boston, Mass.;

43. R. L. Berg, Chevrolet Motor Division, Detroit, Michigan;

44. Charles T. Church, Oldsmobile Division, Walnut Creek, California 94596;

45. General Motors has no knowledge to whom the plaintiff refers. However, the Regional Managers for Oldsmobile Divison for the year 1968 were James F. Mattox, Lansing, Michigan and James W. Knowles, New York, N.Y.;

46. James B. Buckland - Separated;

47. W. J. Brooks, Jr. - Retired 1970
Dallas, Texas;

48. Walter Johnson - Separated
Kingsville, Texas

49. G. P. Prodromos, Pontiac Motor Division, Philadelphia, Pa.;

50. Carl E. Michael, Pontiac Motor Division, Pontiac, Michigan;

51. G. B. Hogan, Pontiac Motor Division, Pontiac, Michigan;

52. J. P. Ware, Pontiac Motor Division, Buffalo, N.Y.;

53. L. J. Dupree - Retired 1971
Cheboygan, Michigan;

54. Jack E. Simmers, Pontiac Motor Division, Pontiac, Michigan;

55. D. V. Miller, General Motors Parts Division, Jacksonville, Florida;

56. General Motors believes this to be the same person as identified in Answer No. 48 above;

57. Gerald J. Burt, Pontiac Motor Division, Philadelphia, Pa.;

58. J. W. Johnston, Pontiac Motor Division, Pontiac, Michigan;

59. L. W. Miller, Pontiac Motor Division, Pontiac, Michigan;

60. Richard K. Noberg, Buick Motor Division, Philadelphia, Pa.;

61. L. D. Robbins, Buick Motor Division, Chicago, Illinois;

62. General Motors has no record of the person to whom plaintiff refers;

63. R. W. Jeffes, Buick Motor Division, Flint, Michigan;

64. James Kurzen, Pontiac Motor Division, Philadelphia, Pa.;

65. Willis E. Hames - Retired 1974 Marietta, Georgia;

66. J. S. Walker - Separated 1971;

67. The person referred to is believed to be the same as the person identified in response to No. 41 above;

68. R. E. Bradley - Resigned about 1973;

69. G. F. Kerr - Deceased;

70. A. K. Pringle, General Motors Acceptance Corporation, Atlanta, Georgia;

71. R. R. Dykstra, General Motors Acceptance Corporation, Dayton, Ohio;

72. R. R. Nelson, General Motors Acceptance Corporation, New York, N.Y.;

73. S. E. Johnson, General Motors Acceptance Corporation, New York, N.Y.;

74. F. Connolly, General Motors Acceptance Corporation, Wenwood, Pa.;

75. D. L. Dooley, General Motors Acceptance Corporation, New York, N.Y.;

76. John Higgins, General Motors Corporation, New York, N.Y.;

77. V. Jertson, General Motors Acceptance Corporation, Detroit, Michigan;

78. Charles McCrary, Chevrolet Motor Division, Detroit, Michigan;

79. G. P. Davey, General Motors Acceptance Corporation, Detroit, Michigan;

80. J. C. Thede, General Motors Corporation, Detroit, Michigan;

81. E. J. Smith - Insufficient information to be identified;

82. W. K. Laughlin, Buick Motor Division, Flint, Michigan;

83. General Motors is unable to identify the person to whom plaintiff refers;

84. G. E. Geier - Retired 1973
Lainsburg, Michigan;

85. A. J. Felton, General Motors Acceptance
Corporation, New York, N.Y.;

86. T. P. Wallace, Chevrolet Motor Division,
Detroit, Michigan;

87. T. L. Swope, Chevrolet Motor Division,
Buffalo, N.Y.;

88. Herbert Dunham - Retired about 1971
Believed to be living in Philadelphia,
Pa. area;

89. R. L. Courtney, Chevrolet Motor Division,
Detroit, Michigan;

90. J. J. Musselman, General Motors Acceptance
Corporation, New York, N.Y.;

91. F. V. Blesse, General Motors Acceptance
Corporation, New York, N.Y.;

92. H. L. Busch, Cadillac Motor Car Division,
Detroit, Michigan;

93. W. Kuck - Insufficient information to be
identified;

94. W. H. Gordon, Jr., Cadillac Motor Car
Division, Chicago, Illinois;

95. Hubert B. Dupuis, Cadillac Motor Car
Division, New York, N.Y.;

96. Albert E. Collier, Cadillac Motor Car
Division, Detroit, Michigan;

97. George Frank - No record. However, George
Frink is employed by Buick Motor Division,
Flint, Michigan.

Interrogatory No. 34

Identify each person during the Time Period who participated in development or testing of the formula or reviewed or approved your formula for calculation of dstination charges.

Answer to Interrogatory No. 34

On October 10, 1974, Judge Griesa directed that discovery relating to destination charges be deferred. Accordingly, GM declines to respond to this interrogatory at this time.

Interrogatory No. 95

Identify and describe in detail your rules, policies and procedures at any time during the Time Period for the evaluation of your Franchisees' performance under their sales or franchise agreement with you (hereinafter "Evaluation Programs"), and as to each of the Evaluation Programs:

(a) identify each instance in which any of your franchisees has not been able to obtain during any of the years of the Time Period a number of cars in excess of the number of cars needed by him to fulfill his area of responsibility;

(b) identify and describe the meaning of the term "planning potential" and describe how this is used to determine the number of cars a dealer is expected to sell or is expected to be allocated by you;

(c) identify each of your Franchisees who was cancelled for reasons including insufficient sales in his area of responsibility and in each case state the total number of sales made by the Franchisee:

(i) inside his territory; and

(ii) outside of his territory;

(d) identify and describe all ways in which your Franchisees can fail to obtain all cars needed by them by some form of allocation or limitation of supply; and

(e) identify and describe all ways in which your Franchisees can be required by you to take more cars than they need, and all action taken by you for failure to accept the unwanted cars.

Answer to Interrogatory No. 95

In response to paragraph (b) of this interrogatory, "planning potential" is as follows: Planning potential is a conservative annual new car unit sales level, for a specific geographical primary area of sales responsibility, which properly located dealerships with adequate facilities and effective management should be able to attain over the business cycle. It is based on past registrations of new cars for the preceding three to five calendar years. When determining planning potential for each dealership point located within a multiple dealership area, emphasis is placed on the relative potential available to each individual dealership facility and its location within the area rather than the relative merchandising ability of the individual dealers.

Planning potential is a guide in determining (a) the overall number and location of dealerships; (b) the size of dealership facilities; (c) the capital standard requirements of dealerships; and (d) for dealerships within a multiple dealership primary area of responsibility, a metropolitan area, the standard new unit sales participation percentages. The planning potential for each dealership is reviewed and updated every two or three years. Planning potentials are not "sales quotas" and should not be construed to represent an accurate forecast of a particular dealership's estimated new car sales in any given model or calendar year.

Interrogatory No. 102

Identify and describe all documents relating to the competitive factors existing between the sale and leasing of the same or different makes of automobiles, and any studies which have been made comparing the markets for the sale and the lease of new automobiles.

Answer to Interrogatory No. 102

In response to this interrogatory, despite diligent efforts, no documents of the descriptions as to which inquiry is made have been found to date.

Interrogatory No. 104

Identify the destination charges and base price (before accessories) for all of your makes to all of your Franchisees in the New York marketing area and in the Philadelphia marketing area.

Answer to Interrogatory No. 104

Attached as Appendix A are schedules which reflect the destination charges applicable for all General Motors divisions for the model years 1972 and 1973.

A partial listing for model years 1967 through 1971 has been compiled at great effort and the figures for that period are presented to the fullest extent possible at this time.

Interrogatory No. 107

Identify each person (other than any attorney acting solely in such capacity) who directed or participated in any file search for documents for production in this action.

Answer to Interrogatory No. 107

The following persons (other than counsel and paraprofessionals) supervised or directed file searches for documents which were produced in this action:

1. Those files relating to communications or business relations with dealers:

Central Office: John C. Bates
Nelson Karney
John D. Rock

Buick Motor Division: T. P. Brennan
J. F. Lyman

Cadillac Motor Car Division: R. L. Henning
R. L. Newton

Chevrolet Motor Division: J. P. Love

Oldsmobile Division: L. H. Witter

Pontiac Motor Division: R. D. Coulter
H. R. Hughes

2. Those files relating to advertising policies of the car divisions:

Buick Motor Division: H. E. Savage
Cadillac Motor Car Division: D. W. Hudler
Chevrolet Motor Division: H. J. Cordes
Oldsmobile Division: T. J. Madzio
Pontiac Motor Division: R. P. Appold

3. Those files of General Motors relating to its relations with banks and other financial institutions:

James Kobus, General Motors Corporation
Detroit, Michigan

4. Those documents relating to vehicle identification numbers of automobiles ordered or purchased by Nabcor or its franchisees from GM dealers:

Buick Motor Division: W. N. Revord
Cadillac Motor Car Division: N. L. Grezlik
Chevrolet Motor Division: J. P. Lyons
GM Assembly Division: C. M. Bodwell
Oldsmobile Division: L. H. Witter
Pontiac Motor Division: C. L. Klescic

Interrogatory No. 108

Identify each person and document consulted or used in the preparation of the answers to any of the above interrogatories.

Answer To Interrogatory No. 108

The following persons (other than counsel and paraprofessionals) were consulted in answering the above interrogatories:

General Motors Corporation-Central Office, Detroit, Michigan:

Claude Adams, Edward P. Belcher, Mark Cocraft, James G. McCullough, Nelson Karney, Richard Payne, Charles J. Prue, John Stewart and William Tresch.

Buick Motor Division: J. F. Lyman, Flint, Michigan

Cadillac Motor Car Division: John P. Connolly, Jr., Detroit, Mich.

Chevrolet Motor Division: J. P. Snyder, Detroit, Michigan

Oldsmobile Division: Lee H. Witters, Lansing, Michigan

Pontiac Motor Division: H. R. Hughes, Pontiac, Michigan

Appendix A

Response to Interrogatory 104

OLDSMOBILE

1972 Models	Omega	All F-85, Cutlass, Cutlass Supreme, except Wagons & Vista Cruisers	Cutlass Wagons and Vista Cruisers	Delta 88, Delta 88 Royale	Custom Cruiser 98 & Toronado
New York, N.Y.	xxx	118.00	123.00	146.00	152.00
Philadelphia, Pa.	xxx	115.00	119.00	141.00	145.00
1973 Models					
New York, N.Y.	110.00	118.00	123.00	146.00	152.00
Philadelphia, Pa.	106.00	115.00	119.00	141.00	145.00

CADILLAC

1972 Models	
New York, N.Y.	136.00
Philadelphia, Pa.	127.00
1973 Models	
New York, N.Y.	136.00
Philadelphia, Pa.	127.00

BUICK-OPEL

1972 Models	Skylark	LeSabre	Centurian & Est. Wag.	Electra	Riviera	Opel
New York, N.Y.	113.00	141.00	144.00	147.00	141.00	21.00
Philadelphia, Pa.	110.00	137.00	140.00	143.00	137.00	28.00

1973 Models	Apollo	Century	LeSabre	Centurian & Est. Wag.	Electra	Riviera	Opel
New York, N.Y.	106.00	113.00	141.00	144.00	147.00	141.00	21.00
Philadelphia, Pa.	103.00	110.00	137.00	140.00	143.00	137.00	28.00

PONTIAC

1972 Models	Ventura	Firebird LeMans LeMans Safari	Grand Am	Catalina Grand Prix Grand Ville Bonneville Grand Safari
New York, N.Y.	105.00	115.00	xxx	140.00
Philadelphia, Pa.	101.00	110.00	xxx	136.00
1973 Models				
New York, N.Y.	105.00	115.00	115.00	140.00
Philadelphia, Pa.	101.00	110.00	110.00	136.00

CHEVROLET

1972 and 1973 Models

	1A	1B	2A	2B	2C
New York, N.Y.	126.00	126.00	126.00	126.00	126.00
Philadelphia, Pa.	121.00	121.00	121.00	121.00	121.00

	3	4	5A	5B	6A
New York, N.Y.	132.00	132.00	108.00	108.00	108.00
Philadelphia, Pa.	121.00	126.00	103.00	103.00	103.00

	6B	7	8	9A	9B
New York, N.Y.	108.00	112.00	112.00	105.00	105.00
Philadelphia, Pa.	103.00	107.00	107.00	101.00	101.00

	10	11	12&45	13	14
New York, N.Y.	108.00	108.00	54.00	153.00	98.00
Philadelphia, Pa.	103.00	103.00	54.00	146.00	95.00

A 1640

1972 DESTINATION CHARGES GROUPS
CHEVROLET PASSENGER AND TRUCK

Group 1A	Group 1B	Group 2A	Group 2B	Group 2C	Group 3	Group 4	Group 5A	Group 5B	Group 6A
15369	16369	16357	16439	16647	15435	16467	13369	13569	13337
469	469	447	639		635		669	469	437
569		457			45				537
669					16435				637
16669					45				
					635				
					45				

Group 6B	Group 7	Group 8	Group 9A	Group 9B	Group 10	Group 11	Group 12	Group 13	Group 14
13639	13136	13667	11327	11369	13857	12387	14111	19437	13380
	236		427	469		487	15	67	480
	436						77		680
	46								
	636								
	46								
	836								
	46								

* Group 45
14105

* Group 45 use charges for Group 12

Group 6A

13337
437
537
637

Group 14

13380
480
680

A 1641

1973 DESTINATION CHARGES GROUPS
CHEVROLET PASSENGER AND TRUCK

(1A&B)	(2A,B&C)	(3)	(4)	(5A&B)	(7)	(9A)
Group #1	Group #2	Group #3	Group #4	Group #6	Group #7	Group #8
1BK69	1BL39	1BK35	1BN67	1AC29	1AC35	1XX27
1BL69	1BL47	1BK45		1AD29	1AD35	1XY27
1BN69	1BL57	1BL35		1AE29	1AE35	
	1BN39	1BL45			1AG35	
	1BN47	1BN35			1AH35	
		1BN45				

(9B)	(10)	(11)	(12)	(45)	(13)	(14)
Group #9	Group #10	Group #11	Group #12	Group #13	Group #14	Group #15
1XX17	1AH57	1FQ87	1HV11	1HV05	1YZ37	1AC80
1XY17		1FS87	1HV15		1YZ67	1AD80
1XX69			1HV77			
1XY69						

(9A)
Group #8

1XX27
1XY27

(14)
Group #15

1AC80
1AD80

CHEVROLET (CONT'D.)

1972 Model Numbers

Model Number	
	Concours Station Wagon (8-Cyl.)
13636	4-Door Station Wagon - 2-Seat
13646	4-Door Station Wagon - 3-Seat
	Concours Estate Wagon (8-Cyl.)
13836	4-Door Estate Wagon - 2-Seat
13846	4-Door Estate Wagon - 3-Seat
	Camaro (6-Cyl.)
12387	Sport Coupe - 4-Passenger
	Camaro (8-Cyl.)
12487	Sport Coupe - 4-Passenger
	Nova (6-Cyl.)
11327	2-Door Coupe - 5-Passenger
11369	4-Door Sedan - 6-Passenger
	Nova (8-Cyl.)
11427	2-Door Coupe - 5-Passenger
11469	4-Door Sedan - 6-Passenger
	Vega (4-Cyl.)
14177	2-Door Coupe - 4-Passenger
14111	2-Door Sedan - 4-Passenger
14115	2-Door Station Wagon - 2-Seat
14105	Sedan Delivery
	Corvette (8-Cyl.)
19437	Coupe - 2-Passenger
19467	Convertible - 2-Passenger
	El Camino (6-Cyl.)
13380	2-Door - 3-Passenger
	El Camino (8-Cyl.)
13480	2-Door - 3-Passenger
13680	2-Door Custom - 3-Passenger
	G10 Series Sportvan (6-Cyl.)
GS11006	Sportvan
GS11306	Sportvan
	G10 Series Sportvan (8-Cyl.)
GE11006	Sportvan
GE11306	Sportvan
GE11036	Beauville Sportvan
GE11336	Beauville Sportvan
	G20 Series Sportvan (6-Cyl.)
GS21006	Sportvan
GS21306	Sportvan
	G20 Series Sportvan (8-Cyl.)
GE21006	Sportvan

Model Number	
	Biscayne (6-Cyl.)
15369	4-Door Sedan - 6-Passenger
	Bel Air (6-Cyl.)
15569	4-Door Sedan - 6-Passenger
	Impala (6-Cyl.)
16357	Sport Coupe - 5-Passenger
16369	4-Door Sedan - 6-Passenger
	Biscayne (8-Cyl.)
15469	4-Door Sedan - 6-Passenger
	Bel Air (8-Cyl.)
15669	4-Door Sedan - 6-Passenger
	Impala (8-Cyl.)
16447	Custom Coupe - 5-Passenger
16457	Sport Coupe - 5-Passenger
16439	Sport Sedan - 6-Passenger
16469	4-Door Sedan - 6-Passenger
16467	Convertible - 5-Passenger
	Caprice (8-Cyl.)
16647	Coupe - 5-Passenger
16639	Sedan - 6-Passenger
	Monte Carlo (8-Cyl.)
13857	Coupe - 5-Passenger
	Chevelle (6-Cyl.)
13337	Sport Coupe - 5-Passenger
13369	4-Door Sedan - 6-Passenger
	Chevelle (8-Cyl.)
13437	Sport Coupe - 5-Passenger
13469	4-Door Sedan - 6-Passenger
	Malibu (6-Cyl.)
13537	Sport Coupe - 5-Passenger
13569	4-Door Sedan - 6-Passenger
	Malibu (8-Cyl.)
13637	Sport Coupe - 5-Passenger
13669	4-Door Sedan - 6-Passenger
13639	Sport Sedan - 6-Passenger
13667	Convertible - 5-Passenger
	Brookwood Station Wagon (8-Cyl.)
15435	4-Door Station Wagon - 2Seat
	Townsman Station Wagon (8-Cyl.)
15635	4-Door Station Wagon - 2-Seat
15645	4-Door Station Wagon - 3-Seat
	Kingswood Station Wagon (8-Cyl.)
16435	4-Door Station Wagon - 2-Seat
16445	4-Door Station Wagon - 3-Seat
	Kingswood Estate Wagon (8-Cyl.)
16635	4-Door Estate Wagon - 2-Seat

Model Number	
	G20 Series Sportvan (8-Cyl.)
GE21306	Sportvan
GE21036	Beauville Sportvan
GE21336	Beauville Sportvan
	G30 Series Sportvan (6-Cyl.)
GS31306	Sportvan
	G30 Series Sportvan (8-Cyl.)
GE31306	Sportvan
GE31336	Beauville Sportvan

Model Number	
	Kingswood Estate Wagon (8-Cyl.)
16645	4-Door Estate Wagon - 3-Seat
	Nomad Station Wagon (6-Cyl.)
13136	4-Door Station Wagon - 2-Seat
	Nomad Station Wagon (8-Cyl.)
13236	4-Door Station Wagon - 2-Seat
	Greenbrier Station Wagon (8-Cyl.)
13436	4-Door Station Wagon - 2-Seat
13446	4-Door Station Wagon - 3-Seat

CHEVROLET (CONT'D.)

1973 Model Numbers

Model Name	Model No.
Chevrolet (Sedan, Coupes or Convertible)	
Caprice Classic Coupe	1BN47
Caprice Classic Sport Sedan	1BN39
Caprice Clasic 4-Door Sedan	1BN69
Caprice Classic Convertible	1BN67
Impala Custom Coupe	1BL47
Impala Sport Coupe	1BL57
Impala Sport Sedan	1BL39
Impala 4-Door Sedan	1BL69
Bel Air 4-Door Sedan	1BK69
Bel Air 4-Door Sedan	1BK69
Monte Carlo	
Monte Carlo Landau Coupe	1AH57/Z03
Monte Carlo S Coupe	1AH57/Z76
Monte Carlo Coupe	1AH57
Chevelle (Sedans or Coupes)	
Laguna Colonnade Hardtop Coupe	1AE37
Laguna Colonnade Hardtop Sedan	1AE29
Malibu Colonnade Hardtop Coupe	1AD37
Malibu Colonnade Hardtop Sedan	1AD29
Malibu Colonnade Hardtop Coupe	1AD37
Malibu Colonnade Hardtop Sedan	1AD29
Deluxe Colonnade Hardtop Coupe	1AC37
Deluxe Colonnade Hardtop Sedan	1AC29
Deluxe Colonnade Hardtop Coupe	1AC37
Deluxe Colonnade Hardtop Sedan	1AC29
Wagons	
Caprice Estate, 2-Seat	1BN35
Caprice Estate 3-Seat	1BN45
Impala 2-Seat	1BL35
Impala 3-Seat	1BL45

Model Name	Model No.
Wagons-Continued	
Bel Air 2-Seat	1BK35
Bel Air 3-Seat	1BK45
Laguna Estate 2-Seat	1AH35
Laguna Estate 3-Seat	1AH35/AQ4
Laguna 2-Seat	1AE3
Laguna 3-Seat	1AE35/AQ4
Malibu Estate 2-Seat	1AG35
Malibu Estate 3-Seat	1AG35/AQ4
Malibu 2-Seat	1AD35
Malibu 3-Seat	1AD35/AQ4
Deluxe 2-Seat	1AC35
Deluxe 3-Seat	1AC35/AQ4
Deluxe 2-Seat	1AC35
Camaro	
Type Lt Coupe	1FS87
Sport Coupe	1FQ87
Sport Coupe	1FQ87
Nova	
Custom Hatchback Coupe	1XY17
Custom Coupe	1XY27
Custom 4-Door Sedan	1XY69
Custom Hatchback Coupe	1XY17
Custom Coupe	1XY27
Custom 4-Door Sedan	1XY69
Hatchback Coupe	1XX17
Coupe	1XX27
4-Door Sedan	1XX69
Hatchback Coupe	1XX17
Coupe	1XX27
4-Door Sedan	1XX69
Vega	
Hatchback Coupe	1HV77
Hatchback Coupe	1HV11
Kammback Wagon	1HV15
Panel Express	1HV05
Corvette	
Coupe	1YZ37
Convertible	1YZ67
El Camino	
El Camino Custom	1AD80
El Camino	1AC80

DESTINATION CHARGES APPLICABLE TO PHILADELPHIA, PA. IN MODEL YEARS 1967 THROUGH 1971

OLDSMOBILE

	Delmont 88 and Delta 88	Delmont 88 Custom, 98 & Toronado	F-85, Cutlass, Cutlass Supreme (except Station Wagons)	Station Wagons and Vista Cruisers
1967 Models	97.00	99.25	70.00	72.25
1968 Models	97.75	100.25	70.50	72.75

	Delta 88, Delta Custom, and Delta Royale	98 and Toronado	F-85, Cutlass, Cutlass Supreme (except Station Wagons)	Station Wagons and Vista Cruisers
1969 Models (Effective 9-13-68)	101.25	104.00	73.00	75.25
1969 Models (Effective 1-13-69)	103.00	105.75	74.25	76.75
1970 Models (Effective 9-18-69)	107.25	110.00	77.25	80.00
1970 Models (Effective 1-19-70)	112.00	114.75	80.75	83.50

	Delta, Delta Custom, Delta Royale	Custom Cruiser, 98 and Toronado	F-85 Cutlass, Cutlass Supreme (Except Cruisers)	Cruisers
1971 Models (Effec. 9-29-70)	129.00	133.00	104.00	108.00
1971 Models (Effec. 11-23-70)	137.00	141.00	111.00	115.00
1971 Models (Effec. 5-10-71)	141.00	145.00	115.00	119.00

CADILLAC

1967 Models	Incr. 4/1/67	
100.00	101.00	
1968 Models		
101.00		
1969 Models	Incr. 1/13/69	
102.00	103.00	
1970 Models	Incr. 1/19/70	
107.00	111.00	
1971 Models	Incr. 11/25/70	Incr. 5/10/71
122.00	125.00	127.00

BUICK - OPEL

	Special	Le Sabre	Wildcat	Electra	Riviera	Opel
1967 Models	70.00	96.00	98.00	99.00	96.00	20.00
1968 Models	70.00	96.00	98.00	99.00	96.00	21.00
1969 Models	75.00	102.00	104.00	105.00	102.00	21.00
1970 Models	82.00	111.00	113.00	114.00	111.00	25.00

	Skylark	Le Sabre	Centurian Est. Wagon	Electra	Riviera	Opel
1971 Models	110.00	137.00	140.00	143.00	137.00	28.00

THE COURT: At a previous hearing I ruled on General Motors' objections to a number of interrogatories addressed to it. I think we got through Interrogatory 52.

MR. KLEINBARD: That is correct, your Honor.

THE COURT: We may have omitted for some reason Interrogatory 33 about destination charges and that is one not covered, and we have interrogatories 53 through 108.

This is just the interrogatires addressed to General Motors. There are a number of other voluminous sets of interrogatories and objections.

I think that it is a basic waste of time to have the Court go through these interrogatories and the objections piece by piece.

The interrogatories are so broad, so far beyond the limited issues of this case that what I am going to do is to rule in this fashion:

No further answers to the plaintiff's interrogatories beyond what may have already been furnished are required of any defendant.

If and when, at a later point in the discovery, the plaintiff submits to me in advance limited interrogatories addressed to specific parties and if I approve gts

them in advance, they can be answered. But the general scope and character of the interrogatories is so defective that it seems to me an imposition on the Court to have served them and it is simply not appropriate to try to take them one by one.

I don't think the plaintiffs hae drafted their interrogatories in such a way as to really merit that kind of treatment.

MR. PERSON: Your Honor, are you saying generally that they are irrelevant to the issues in the case?

THE COURT: I am saying that there may be here and there some part of an interrogatory or maybe some whole interrogatory which might be relevant, but those questions are so few and far between and so burried in masses of irrelevant material that it seems to me that it is incumbent upon you to redraft your interrogatories and not incumbent upon the Court to go through piece by piece and try to ferret out the relevant from the mass of irrelevant.

We have devised, I think, some ground rules which I think are going to get the discovery on a realistic basis. We dealt with document production I think reasonably successfully. As I understand it, depositions are going forward.

I have offered to hear any objections to the scope of depositions just as promptly as anybody seeks an appointment with me and I haven't had anybody seek appointments so I assume the depositions are going forward. So we do have document production and depositions going forward.

Then we have this matter which I regard to be very important and I am sure you do, also, Mr. Person, and that is the testimony of Mr. Maiorano next week, at which time we will try to get wound up the portion of the discovery dealing with the specification of NABCOR's claims.

I think there is very substantial discovery going on. The interrogatories so far have done nothing in my view but produce unnecessary waste of paper and work by everybody who has had to do with them and I am simply going to require that the interrogatory procedure be laid aside at this time.

MR. PERSON: Your Honor, I would like to say something, and that is in preparing for a good faith hearing or something like that I found that it was necessary to do the work that was required to answer the interrogatories as I had said I would to the extent that gts

I didn't object and I have prepared these answers and I am going to serve them shortly. I have given a copy to Mr. Kaplan already. These are verified by --

THE COURT: What are you speaking of?

MR. PERSON: The interrogatories by GM served on the plaintiffs.

I have answered to the extent that we do not object to them when I filed my objections several months ago and I am, for this reason, saying that we don't have any need for that hearing because we have already done the work and we have given them this information that the hearing was designed to produce and I am getting set to serve that.

THE COURT: Do you have that in draft form?

MR. PERSON: No. This is final and verified. Here is a copy (handing).

THE COURT: Have you given this to the other side?

MR. PERSON: Only to Mr. Kaplan, and anyone else here who wants it --

MR. KLEINBARD: We have received it just a few moments ago, your Honor.

MR. PERSON: Let the record reflect, your Honor, that I have served a copy of NABCOR's answers on each of the counsel representing defendants here today.

It took a very substantial amount of work to go over a lot of documents and I think that this is really the better way to get at very specifics, since memory and times, I guess isn't going to produce all that I can get through exrracting this information from various documents and interviewing people. So for that reason we don't have any need for that so-called good faith hearing.

THE COURT: I guess it makes it unanimous. Nobody now wants it.

I have a lingering curiosity --

MR. PERSON: May I explain something to help you understand part of this.

In effect, we are ready to go to trial and we are going to get whatever discovery we can get, which isn't really much because of the severe limitations, and I understand some of the reasoning behind it. But we will continue to seek whatever discovery is relevant to whatever issues remain in the case, but in the meantime we do want to say that we are prepared to go to trial at such time as you would like to set a trial date and, in fact, we would be willing to have you set a trial date right now, maybe in February or so, and we would be there ready, your Honor, for the trial.

you an idea if we get answers to those or depending how your Honor rules when we think we will be ready to go to trial.

We would like to see an end to this as much as possible.

THE COURT: I do think that --

MR. KLEINBARD: We don't want to track down everyone who has ever heard of NABCOR. I think that is pretty clear.

THE COURT: I think, Mr. Person, it is right that the action should go to trial. I don't know when I would try it, but it would be a matter of tremendous economy to get with it and let's think about how we can get with it.

MR. KLEINBARD: Why don't we use the time that we have already set, your Honor?

THE COURT: We don't have to take that whole day.

MR. KLEINBARD: No, no, but, I mean, if we meet next Friday since you had set aside the time.

THE COURT: We will meet at the appointed hour and we will take as little or as much time as we need.

MR. PERSON: I want to point out that perhaps 85 to 90 per cent of the discoveries that I have made here the injunctive relief he would be prepared to swing back into business.

MR. KLEINBARD: The only thing, your Honor, is that he was asked a question as to whether he was still in the automobile business, and he answered Interrogatory Number 74, "No." "Have you sold any cars in the last twelve months?" "No."

THE COURT: All I am saying --

MR. KLEINBARD: You don't want to do that now?

THE COURT: No.

MR. KLEINBARD: Can he provide that? If we are going to go ahead on the trial, it is unclear to us as to whether you are going to try naked boycott or whether you would include, as we think we must, because of the overlap of proof, the accounts which relate to fleets, fleet allotments et cetera.

In other words, we would want to try, if we tried anything, everything but the destination charges, which are clearly severable. I can't have fleet certificates come in as part of the boycott and not have it involved in the Robinson-Patman Act.

THE COURT: I didn't contemplate splitting the trial apart at all, except I did defer discovery on the destination charges.

MR. KLEINBARD: Right.

THE COURT: Now, it seems to me that what we shoul do is work towards a trial of everything.

MR. KLEINBARD: I agree, your Honor.

THE COURT: Now, if we find -- and we haven't thus far found it, but if we should find that something should be split off, like the destination charges or, for instance, there has been some plea by the Better Business Bureau defendants hat they do not want to participate in a long trial and they want to get severed, well, I haven't turned that down, and that is still ahead of us.

But I am not prepared as of this point -- we would like to try for the objective of one trial unless we find reason to make exceptions.

MR. KLEINBARD: That is what we would want.

Now, as to the next item in my letter, it related to the damage period, and I have pointed out that there were no incidents, that is, the plaintiff had not served any supplemental complaint with respect to incidents subsequent to December 10, 1970.

THE COURT: Well, then, that is the cut-off.

MR. KLEINBARD: And that should be the cut-off.

Now, in this paper that he served today, he says that he would like to serve a supplemental complaint past

Plaintiff's Notice of Deposition

SCHEDULE A

Name of Defendant	Date and Time of Examination
Defendant THE BUFFALO COURIER-EXPRESS, INC.	

Name or Description of Officers or Managing Agents of Defendant, The Buffalo Courier-Express, Inc. to be Examined:

ADVERTISING MANAGER during March through October, 1967	January 28, 1975 10:00 a.m.
Mr. Clark, Advertising Department	January 28, 1975 2:00 p.m.

and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or the documents described in Schedule B.

Defendant WESTCHESTER-ROCKLAND NEWSPAPERS, INC.

Name or Description of Officers or Managing Agents of Defendant, Westchester-Rockland Newspapers, Inc. to be Examined:

MARK ARNOLD	January 29, 1975 10:00 a.m.
WILLIAM NICOL	January 29, 1975 2:00 p.m.

and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or the documents described in Schedule B.

Defendant NEWSDAY, INC.

Name or Description of Officers or Managing Agents of Defendant, Newsday, Inc. to be Examined:

DAVID TARGE	January 30, 1975 10:00 a.m.
J. DANIELS	January 30, 1975 2:00 p.m.
L. W. SEAMAN	January 31, 1975 10:00 a.m.
PERSON WITH INITIALS "LB" who wrote note to "Att: Miss M. Ferris", dated 7/12/66 at bottom of Diener & Dorskind insertion order # 24040	January 31, 1975 2:00 p.m.

SCHEDULE A (Continued)

Name of Defendant	Date and Time of Examination
Defendant Newsday, Inc. (Continued)	
EDWARD G. WARREN	February 3, 1975 2:00 p.m.
M. BURKARD	February 4, 1975 2:00 p.m.
E. LUTZ	February 5, 1975 2:00 p.m.
MISS M. FERRIS	February 6, 1975 2:00 p.m.

and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or the documents described in Schedule B.

Defendant NEW YORK NEWS, INC.

Name or Description of Officers or Managing Agents of Defendant, New York News, Inc. to be Examined:

EDWARD F. KROEPKE	February 7, 1975 2:00 p.m.
MR. DUNLEAVY	February 10, 1975 2:00 p.m.
F. LUDWIG	February 11, 1975 2:00 p.m.
ROBERT TURTON	February 13, 1975 2:00 p.m.
CHRISTINE E. KRIEBER	February 14, 1975 2:00 p.m.
MR. T. MORAN	February 18, 1975 10:00 a.m.
PERSON(S) WHO WROTE (1) "OK for salesman; delay franchise" at bottom of Advertising Copy Acceptance Committee Opinion, 11/2/65; and (2) 4-25-69 note "Informed Mr. & Mrs. Spooner of our objections & informed her to have advertiser get in touch with Lou Troise to clear ad."	February 18, 1975 2:00 p.m.

and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or the documents described in Schedule B.

Plaintiffs' 2nd Motion for a Preliminary Injunction

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

NATIONAL AUTO BROKERS CORP., et al., ; 70 Civ. 5421A (TPG)

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- -x

NOTICE OF MOTION AND MOTION FOR A PRELIMINARY INJUNCTION, A PARTIAL SUMMARY JUDGMENT AND OTHER RELIEF

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Carl E. Person, sworn to January 8, 1975, the exhibits thereto, and all of the papers and proceedings heretofore had herein, the undersigned will move this Court, before Honorable Thomas P. Griesa, United States District Judge, on January 23, 1975 at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, at the United States Courthouse, Foley Square, New York, New York, for an order

(1) granting a preliminary injunction, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, against each of defendants GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION, their respective officers, agents, servants, employees and attorneys, FREDERIC G. DONNER and JAMES M. ROCHE, their respective agents and attorneys (hereinafter collectively referred to as the "Defendants"), and all persons in active concert or participation with any of the Defendants, pending the final hearing and determination of this action, enjoining them from:

(a) interfering with attempts by plaintiffs to settle the action with other defendants;

(b) soliciting franchisees of National Auto Brokers Corp. ("Nabcor") to sue Nabcor and volunteering or promising cooperation by Defendants in any such actions which have been or may be brought against Nabcor;

(c) financing and otherwise maintaining the defense of this action on behalf of other defendants;

(d) indemnifying other defendants against any judgments, losses or other expenses in connection with this action;

(e) posting any supersedeas bonds or paying for any supersedeas bond premiums for the benefit of other defendants on any appeals;

(f) soliciting and assisting Nabcor's judgment creditors to attach and/or seize any actual or alleged interest of Nabcor in this action or in any proceeds of settlement thereof; and

(g) otherwise influencing persons who are not defendants in this action to take any action detrimental to plaintiffs or plaintiffs' counsel or assisting in connection therewith;

on the grounds that:

(i) unless restrained by this Court, the Defendants will continue to perform the acts described in ¶¶ (1)(a)-(g) above;

(ii) such acts by Defendants will result in irreparable injury, loss and damage to plaintiffs, as more particularly appears in the affidavit of Carl E. Person annexed hereto;

(iii) the issuance of a preliminary injunction herein will not cause undue inconvenience or loss to Defendants, but will prevent irreparable injury to plaintiffs; and

(iv) plaintiffs have no adequate remedy at law;

(2) directing the entry of a partial summary judgment on the issue of liability alone, pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, against each of the Defendants, on the grounds that:

(a) Defendants have conspired to impede, hinder, obstruct and defeat the due course of justice for plaintiffs with the intent to deny to plaintiffs the equal protection of the laws and to injure plaintiffs in their property for lawfully enforcing or attempting to enforce the rights of plaintiffs to equal protection of the laws, in violation of § 1985 of the Civil Rights Act, 42 U.S.C.A. § 1985;

(b) Defendants have conspired to restrain plaintiffs from engaging in the business of marketing new automobiles, and in furtherance of the conspiracy and to prevent plaintiffs from obtaining judicial including injunctive relief, have injured plaintiffs in their business and property, and have committed other non-privileged acts of economic aggression against plaintiffs, in violation of §§ 1-2 of the Sherman Antitrust Act, 15 U.S.C.A. §§ 1-2;

(c) The conspiracy alleged in the complaint is being continued by the acts described in ¶¶ (1)(a)-(q) above, to which conspiracy Defendants' attorneys have now become a known party; and such acts themselves justify entry of a partial summary judgment in favor of plaintiffs against each of the Defendants on the issue of liability alone; and

(d) The acts described in ¶¶ (1)(a)-(q) above justify a determination, under Rule 11 of the Federal Rules of Civil Procedure, that Defendants are liable to plaintiffs for the conspiracies alleged in the complaint and that the answers of Defendants thereto are a sham, lacking good ground of support and interposed solely for delay; and that the action should proceed as though the answers had not been served;

(3) requiring each of the Defendants and their counsel to identify and describe in detail each contact or communication made by them about plaintiffs or their counsel with any persons other than named defendants or their counsel herein, from commencement of this action to the present; and all communications between GM and any other defendants relating to plaintiffs' settlement offers;

(4) requiring each of the Defendants, pursuant to § 2000e-5(k) of the Civil Rights Act, 42 U.S.C.A. § 2000e-5(k), § 4 of the Clayton Antitrust Act, 15 U.S.C.A. § 15, Rule 37 of the Federal Rules of Civil Procedure and the inherent power of this Court, to pay to movants the reasonable expenses, including the value of attorneys' time, caused by Defendants' illegal activities directed against plaintiffs to obstruct and defeat the due course of justice for plaintiffs and thereby cause additional expenses for plaintiffs and substantial wasted effort by plaintiffs' counsel; and trebling the amount of such damages, pursuant to § 4 of the Clayton Antitrust Act, 15 U.S.C.A. § 15; and

(5) granting to the undersigned such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to General Rule 9 of this Court, answering papers shall be served at least three (3) days before the return date if service is made by hand; and at least six (6) days before the return date if service is made by mail.

Dated: New York, New York
January 8 , 1975

Carl E. Person

Attorney for Plaintiffs
Office & P.O. Address:
132 Nassau Street
New York, N.Y. 10038

TO: All Defendants' Attorneys.

Tel. No. (212) 349-4616

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421A (TPG)

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- x

AFFIDAVIT IN SUPPORT OF
MOTION FOR A PRELIMINARY
INJUNCTION, A PARTIAL SUMMAR
JUDGMENT AND OTHER RELIEF

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, deposes and says:

1. I am the attorney for plaintiffs and am fully familiar with all facts and all prior proceedings heretofore had in this action.

2. I make this affidavit in support of plaintiffs' motion for a preliminary injunction, a partial summary judgment and other relief against defendants GENERAL MOTORS CORPORATION ("GM"), GENERAL MOTORS ACCEPTANCE CORPORATION ("GMAC"), their respective officers, agents, servants, employees and attorneys, FREDERIC G. DONNER and JAMES M. ROCHE, their respective agents and attorneys (hereinafter collectively referred to as the "GM Defendants"), and all persons in active concert or participation with any of the GM Defendants, pending the final hearing and determination of this action, as described in the NOTICE OF MOTION AND MOTION FOR A PRELIMINARY INJUNCTION, A PARTIAL SUMMARY JUDGMENT AND OTHER RELIEF, dated January 8, 1975 (the "Notice of Motion").

3. GM is well known for the way in which it occasionally litigates. When Ralph Nader sued GM, GM retained the services of a female detective to uncover certain weaknesses in Nader, if any, and found none, apparently. What GM has been doing to Nabcor is far more extensive and totally unconscionable.

4. These acts against Nabcor are described in ¶¶ 1(a)-(g) of the Notice of Motion. None of them under the circumstances is proper, necessary or lawful in the defense of this action by Defendants. This is so particularly where one of the GM Defendants (viz., GM) is a monopolist in the marketing of new automobiles and in connection with the monopoly has substantial economic influence, as the world's largest industrial company, over each and every one of the other defendants. This monopoly and extended influence has resulted in an illegal reciprocal relationship by GM and others in connection with a combination and conspiracy to improperly maintain this litigation. By remaining in this action as defendants at the request or suggestion of the GM Defendants, the other defendants are assured they will not lose any of the substantial economic advantages GM and GMAC (or Ford) has been bestowing upon these defendants, and are probably advised as well that they can expect additional economic advantages for their "inconvenience" and to make up for any small amounts they may spend to make it appear that they are defending themselves in this action. These reciprocal business arrangements designed to injure plaintiffs and plaintiffs counsel are illegal, and plaintiffs are seeking a preliminary injunction to stop the practice.

5. Plaintiff National Auto Brokers Corp. ("Nabcor"), as franchisor of the 6 franchisee plaintiffs, agreed to pay the costs of this litigation, which costs the 6 franchisees could not afford themselves, because of the

illegal activities of GM Defendants and the other defendants, which drove them out of the new-car business. Nabcor ceased its new-car business after and as a result of the denial of Nabcor's prior motion for a preliminary injunction to enjoin GM from interfering with Nabcor's sources of supply. It is no secre that during the past several years Nabcor has been having extreme financial difficulty,also caused by the activities of the GM Defendants and other defendants, as described in the complaint and in the Notice of Motion. In the opinion of this Court, dated April 5, 1974, Judge Thomas P. Griesa stated in part:

> "The record also shows that Nabcor has been in weak financial condition for well over two years. For the nine months ending October 31, 1971 Nabcor had an operating loss of $82,000 on sales of $221,000 -- and a total loss, after extraordinary items, of $183,651. For the six months ending July 31, 1972 Nabcor had an operating loss of $87,000 and a total loss of $96,000 on sales of $216,000. As of July 31, 1972 Nabcor had a negative working capital balance of $212,000. As of March 8, 1973 Nabcor had a negative cash balance of $[illegible] 472.
>
> "Nabcor has not provided current figures. However, the record shows that a judgment for $150,000 was entered against Nabcor in December 1972 in an Ohio state court on a defaulted promissory note. This judgment came to light when certain defendants were served in November 1973 with an order of attachment issued by the Supreme Court, New York County.
>
> "Under all the circumstances I conclude that Nabcor and its attorney should not be permitted to represent any parties in this action beyond the plaintiffs who are now named in the complaint." (page 51 of the opinion of Judge Thomas P. Griesa.)

6. The circumstances described above have not improved. The $150,00 judgment, in favor of The Celina Mutual Insurance Company, remains wholly uncollected, and through addition of interest now amounts to about $170,000.

7. Plaintiffs ask this Court to take judicial notice of the economi power of GM in contrast to the judicially-declared financial condition of Nabcor. The disparity in assets and power is maximum, increasing every day, an

calls for granting of the requested relief by this Court. Plaintiffs are asking that GM not be allowed to add to its enormous concentration of assets and power by combining and conspiring with Ford Motor Company ("Ford"), Chrysler Corporation ("Chrysler"), First National City Bank ("Citibank") and the other defendants in this action through reciprocal arrangements and interference with plaintiffs' negotiations which would be obviously illegal except for the fact that these activities are being carried out before this Court as a purported "defense" to this action.

8. In light of this known and increasing financial difficulty for Nabcor, and in furtherance of GM's partially announced policy of creating, maintaining and increasing these financial difficulties for Nabcor (see ¶ 50 below), the GM Defendants (acting in concert with themselves and other defendants) have adopted an illegal defense tactic affiant calls the "Strategy of Strangulation" of, or economic aggression against, Nabcor and its counsel. Plaintiffs now seek to obtain judicial relief, and enjoin this defense tactic. It's inconceivable that this Court can condone each and every one of these acts of economic aggression by a known monopolist against a company found by the Court to be in substantial financial difficulty, as described in ¶ 5 above. Plaintiffs, by their motion, are asking this Court to call a halt to these illegal practices, with the hope that it is not too late to have a fair and speedy pre-trial proceeding and trial. One of the plaintiffs (Louis H. Jamele) is now dead, which makes the programmed delays in this case a programmed denial of justice as to him at least. These delays were occasioned to a great extent by the GM Defendants' Strategy of Strangulation, discussed at length throughout this affidavit.

9. The GM Defendants' stated objectives of their economic aggression against Nabcor and Nabcor's counsel is to render them economically unable to properly maintain this action against the GM Defendants, to prevent them from having the economic wherewithal needed to obtain the discovery and retain the legal and other manpower to maximize plaintiffs' probabilities of success in the action and the dollar amount of such success. There are potentially hundred of persons to be deposed, persons who have knowledge about the matters alleged in the complaint. Plaintiffs are in no position to prosecute this action to the extent they otherwise could and would, as a result of the economic aggression being practiced upon them by the GM Defendants.

10. Already, plaintiffs have deposed approximately 32 persons, and have noticed approximately 17 more for depositions. The number of remaining depositions, if plaintiffs are to be able to have a fair pre-trial proceeding, could amount to 200, particularly where GM, GMAC, Ford, Chrysler and American Motors and other defendants are so complex in corporate organization that the needed information is not known to a limited number of persons. In addition, there are 29 other defendants and more than 100 co-conspirators. It might be noted that, in order to speed up the trial, plaintiffs have stated that they are willing to go to trial as soon as possible based on the evidence they have at such time. Before commencement of the trial, however, it is of fundamental importance to know which of the parties are actually in litigation with plaintiffs, which is one of the purposes of the Notice of Motion. The length of the trial may be shortened substantially as a result.

11. Most of the depositions have been transcribed by Nabcor and counsel, because of the lack of funds caused by the illegal activities of the GM Defendants and the other defendants. This policy of illegal,

conspiratorial economic aggression is being continued to this day before this Court to prevent Nabcor from obtaining this needed discovery, obtaining other evidence and otherwise getting the case ready for a fair and speedy trial.

12. Rather than fighting plaintiffs on the issues, where the GM Defendants are bound to lose, the GM Defendants have adopted a strategy of fighting the financially-crippled Nabcor and its counsel on unrelated economic grounds, in a continuation of the conspiracy to put Nabcor out of the new-car business permanently and prevent Nabcor from obtaining a permanent injunction and other relief in this action. The strategy of the GM Defendants includes the following specific tactics:

A. Interfering with attempts by plaintiffs to settle the action with all of the other defendants (except Ford) on an individual basis, for settlement amounts substantially lower than the anticipated legal fees and expenses to be incurred by each of such other defendants, respectively;

B. Soliciting franchisees of Nabcor to bring one or more actions or class actions against Nabcor in an attempt (i) to further cripple Nabcor's financial status; and (ii) to manufacture "evidence" of alleged fraud by Nabcor for use in this action against Nabcor; and offering valuable legal and other support to help maintain any such franchisee actions against Nabcor;

C. Maintaining and financing the defense of this action on behalf of the other defendants, at least one of whom has not paid one cent toward legal fees (or expenses, presumably) since commencement of this action by plaintiffs in 1970 (see ¶ 75 below);

D. Indemnifying other defendants against judgment, losses and other expenses in connection with this action, which indemnification arrangement is the inevitable and natural result of (i) the GM Defendants' suggestions or veiled threats to the other defendants not to settle the action with plaintiffs; and (ii) the GM Defendants' payment of all or substantially all legal fees and other litigation expenses for such other defendants in connection with this action;

E. Promising to post or guaranty a supersedeas bond or pay the premium for a supersedeas bond for other defendants on any appeal from an adverse judgment, which promised activities by the GM Defendants are the inevitable and natural result of (i) the GM Defendants' suggestions or veiled threats to the other defendants not to settle the action with plaintiffs; and (ii) the GM Defendants' payment of all or substantially all legal fees and other litigation expenses for such other defendants in connection with this action;

F. Soliciting and assisting The Celina Mutual Insurance Company, of Celina, Ohio, a judgment creditor of Nabcor, in its New York attachment of Nabcor's interest in this action based upon such judgment, and attempting to seize a non-existent interest of Nabcor in proceeds of 5 settlements with defendants herein (see ¶ 49 below), activities of the GM Defendants based on affiant's informatio and belief, but which plaintiffs cannot now prove with certainty; much of this information is set forth elsewhere in this affidavit and in the affidavit of Carl E. Person, sworn to April 3, 1974, filed in support of plaintiffs' Cross Motion, dated April 3, 1974 (a copy of which affidavit and Notice of Cross Motion is annexed hereto as Exhibit A);

G. Conspiring with a Victor Bergelson and others in Bergelson's Group to:

(i) take control of Nabcor away from Frank Maiorana for the purpose of discontinuing this action and the alleged class actions (before denial of class action status by this Court), see ¶¶ 17-31 below;

(ii) removing all or substantially all of the business records and filing cabinets then located in Nabcor's office by armed robbery with one or more guns pointed at Nabcor's employees by the Bergelson Group, shortly after Victor Bergelson had met five times with a high GM official (R. L. Berg) in Detroit and in Philadelphia (see ¶ 25 below); and

(iii) granting credit by GMAC at the request of this high GM official (after GMAC had turned down the request) to a company controlled by the Bergelson Group (when similar credit had previously been denied by GMAC to Nabcor) in consideration of Bergelson's offer to take control of Nabcor away from Frank Maiorana and then dismiss this action.

H. Otherwise influencing third persons presently unknown (who are not defendants in this action) to take actions detrimental to plaintiffs or plaintiffs' counsel, or assisting such third persons in connection therewith.

13. What the GM Defendants are doing to Nabcor, as a concerted effort to prevent Nabcor and the other plaintiffs from having their day in court, is

an outrage, an affront to this Court and should be enjoined during the pendency of this action. A denial of this motion would be the denial of a fair and speedy pre-trial proceeding and trial to Nabcor and the other plaintiffs, which due to Nabcor's financial condition would cause irreparable injury, loss and damage to Nabcor and the other plaintiffs by requiring them to use their assets in futile litigation and allowing the GM Defendants to rob Nabcor and counsel of their resources through the acts of economic aggression described herein.

14. The GM Defendants' economic aggression against Nabcor is a Strategy of Strangulation of Nabcor and Nabcor's counsel, which is non-privileged and illegal, and an insult to the judicial process. The Strategy in no way assists the GM Defendants in presenting any legitimate defense in this action. This Strategy of Strangulation is directed solely to preventing Nabcor and the other plaintiffs from being able to gather relevant evidence and needed discovery, and from presenting to this Court the strong case for liability and substantial damages which reasonably would be available through a speedy pre-trial process unhampered by acts of economic aggression of the kind being committed by the GM Defendants. Affiant submits that the Federal Rules of Civil Procedure and other laws, such as the Sherman Antitrust Act and the Civil Rights Act prohibit the GM Defendants from performing these acts of economic aggression against Nabcor and Nabcor's counsel.

15. Throughout 1971 and prior to determination by this Court of the issue whether Nabcor could represent its franchisees in this action as a class action, Lewis A. Kaplan, Esq., of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for the GM Defendants, solicited at least 11 franchisees of Nabcor, without the knowledge of plaintiffs and without the knowledge or approval by this Court, and:

(a) encouraged them to bring an action or a class action against Nabcor;

(b) offered to give them support in any such suits they might bring or have against Nabcor; and

(c) attempted to persuade them from becoming members of the class Nabcor was then trying to represent before this Court (unsuccessfully, as it turned out), by making false and misleading statements about Nabcor and this action to them, without supervision or approval by this Court.

See Exhibit B hereto, consisting of 9 pages of correspondence relating to Mr. Kaplan's communications with members of the alleged Nabcor class of Nabcor franchisees throughout the year 1971, an outrageous and illegal solicitation by the GM Defendants, about which plaintiffs first became aware during the middle part of the summer of 1974. David Rose, of Nu Car Mart (a Nabcor franchisee) told affiant about this on July 9, 1974. This solicitation to sue Nabcor was an unlawful and deliberate act of economic aggression against Nabcor by the GM Defendants, and an affront to the judicial process which requires that all contacts with class members relating to class matters be supervised by the court. Presumably, the GM Defendants solicited other Nabcor franchisees or persons (such as The Celina Mutual Insurance Company) to sue Nabcor as well, a matter which plaintiffs seek to have the GM Defendants disclose by order of this Court, pursuant to this motion. On Monday, October 11, 1971, Mr. Kaplan met with Nabcor franchisees Claude Flanagan, Alfred H. Moore, Donald Kurtz and David Rose in the offices of Messrs. Zenoff, Westler, Jones & Kamm, in the presence of attorney A. J. Zenoff.

16. The Matter of Richard Mesirov has been well documented in this action. Richard Mesirov, nephew of the senior partner of Ford's antitrust attorneys in Philadelphia (Messrs. Mesirov, Gelman, Jaffe & Levin) bought a franchise from Nabcor in October, 1969 and shortly thereafter (in March, 1970) brought suit against Nabcor together with 2 other Nabcor franchisees (Messrs. Gerson and Gerson). Mr. Mesirov was represented in this action (on an "of counsel" basis) by the Mesirov law firm. Mr. Richard Mesirov or the Mesirov law firm solicited at least one other Nabcor franchisee (Nicholas Sipa) to sue Nabcor. Subsequently, during September, 1971, Mr. Kaplan "selected" Mr. Richard Mesirov as his first (presumably "representative") Nabcor franchisee to depose (and one of the Gersons as his 2nd), to obtain evidence of alleged fraud by Nabcor in its dealings with the 250 some odd Nabcor franchisees. During affiant's cross examination, Mr. Mesirov testified in substance that Mr. Kaplan had spoken with him previously, in the presence of an attorney from the Mesirov firm (which firm was then representing both Mr. Mesirov and Ford, in antitrust matters), and advised Mr. Mesirov that he had no valid claims against GM as a Nabcor franchisee. This was done without advising Mr. Mesirov that his own attorneys were the antitrust attorneys for Ford in Philadelphia, in what amounted to a colossal conflict of interest. It appears from these circumstances that Mesirov could have been a shill for Ford and encouraged by the firm to buy a Nabcor franchise for the specific purpose of having the firm bring a suit against Nabcor and soliciting other Nabcor franchisees to sue Nabcor as well. With this as a background, Mr. Kaplan advised Mr. Mesirov that he had no claim as a Nabcor franchisee against GM, giving this advice in the presence of Ford's antitrust lawyers who were also representing Mr. Mesirov, without advising Mr. Mesirov of the substantial conflict of interest. (See Exhibit A hereto, a copy of the affidavit of Carl E. Person, sworn to April 3, 1974, in support of plaintiffs' cross motion; and Exhibit C hereto, a copy of a letter from affiant to Judge Thomas P. Griesa, dated March 1, 1973.)

17. Another "litigation" tactic by the GM Defendants needs to be reviewed. Victor Bergelson and Joseph Rose, members of the "Bergelson Group", the controlling shareholders of Consumer Auto Leasing, Ltd. ("CAL"), met with GMAC's R. E. Bradley in Dayton, Ohio on November 11, 1971. Two representatives of an ailing auto rental company (Charge-A-Car) were present. The Bergelson Group proposed that CAL (through a newly-created subsidiary, CARZ, Inc.) purchase all the assets of Charge-A-Car and assume Charge-A-Car's liabilities to GMAC and assume payment of a $150,000 loan by The Celina Mutual Insurance Company. (See Exhibit D hereto, a copy of a GMAC memorandum dated November 18, 1971.)

18. The Bergelson Group appears to have falsely represented that CAL was a subsidiary of Nabcor. (See Exhibit D.) Several weeks thereafter, on November 28, 1971, Nabcor and the Bergelson Group entered into an agreement which provided, under certain conditions, that Nabcor would acquire the stock of CAL, contingent upon approval by Nabcor's shareholders at a meeting thereof. No meeting of Nabcor's shareholders was ever held (because of subsequent dissension between the management groups of Nabcor and CAL, mainly Victor Bergelson's unauthorized payment of Nabcor's $50,000 to GMAC) and the acquisition of CAL was never consummated.

19. Before this unauthorized and fraudulent payment of $50,000 to GMAC, the Bergelson Group reasonably anticipated (together with Nabcor) that a shareholders meeting for Nabcor would be held and that the acquisition of CAL would be approved by Nabcor's shareholders. With the knowledge of Frank Maiorana, President of Nabcor, Victor Bergelson (through CAL's subsidiary CARZ, Inc.) purchased Charge-A-Car's accounts receivables from The Celina Mutual Insurance Company ("Celina") and, without the knowledge or consent of Frank Maiorana, purchased the line of rental cars from GMAC or GM, using a

$50,000 check of Nabcor held in escrow by Nabcor's local attorney, contrary to Frank Maiorana's instructions. Pursuant to the agreement with Celina (to which Nabcor was a party, on the belief that the CAL acquisition would be approved by Nabcor's shareholders) Nabcor and CAL agreed to make payments of principal and interest to Celina, and in the unauthorized agreement CAL agreed to make payments to GMAC. CAL immediately fell behind on the promised payments to Celina and GMAC, apparently due to the failure of Celina to properly represent the quality of the receivables and that they were subject to undisclosed conditions and agreements, which affected their validity. (See Exhibit E hereto, a copy of a file memorandum by GMAC's G. F. Kerr, dated December 12, 1971, and Exhibit F hereto, a copy of a letter from GMAC's Bradley to Victor Bergelson c/o CARZ, Inc., dated February 23, 1972.)

20. On March 1, 1972, Victor Bergelson called GMAC's Bradley to "request for an additional extension" and left Bradley:

> "with the impression that Burgelson's [sic] proposal may be to offer to drop a suit against GM in exchange for more favorable consideration in his request for further assistance from GM-GMAC in his present difficulties with Charge-A-Car." (See Exhibit G hereto, a copy of a file memorandum by GMAC's D. L. Dooley dated March 1, 1972, with a copy thereof going to J. Higgins, apparently of GM's Legal Department.)

21. On March 3, 1972, Bergelson wrote to GMAC's Bradley with a request for a further moratorium on payments to GMAC. Also, Bergelson said:

> "I wish to make it perfectly clear that our group is in frim [sic] control of the Board of Directors of Nabcor and its operations, and that Mr. Maiorana's employment has been terminated. Furthermore, I wish to make clear that I have reviewed completely the business formerly conducted by Nabcor, and certain other actions which were taken by Nabcor, and that I have firmly recommended to the Board of Directors that each of these practices be discontinued at once." (See Exhibit H hereto, a copy of a letter from Bergelson to GMAC's Bradley, dated March 3, 1972, at page 2.)

22. During this period immediately before February 15, 1972, apparently, Victor Bergelson met about 5 times with R. L. Berg, Director of Fleet Sales of GM's Chevrolet Motor Division. From August, 1968 to July, 1969, R. L. Berg was the Director of the Fleet and Government Sales Section of GM and from 1965 to 1968 was Manager of Rental, Leasing & Commercial Sales in the Fleet and Government Sales Section. During this time, Mr. Berg was the recipient of various communications about Nabcor, including the September 29, 1967 bulletin on Nabcor by the Buffalo Automobile Dealers Association (with respect to which a grand jury investigation was held in the Western District of New York. See Exhibit I hereto, a copy of Plaintiffs' Berg Exhibit 1 during the deposition of Mr. Berg on October 8, 1974; and Exhibit J hereto, a copy of Plaintiffs' Berg Exhibit 5 during said deposition, which shows how Mr. Berg was involved in the denial of a fleet certificate to Nabcor during 1967; also see Exhibit K hereto, a copy of Plaintiffs' Olson Exhibit 10, a copy of a letter from R. L. Berg to N. M. Karney, dated February 14, 1968 concerning Nabcor's request for a fleet certificate (with certain privileged communications with counsel deleted); also see Exhibit L hereto for a copy of pages 16 and 46-52 of the unexecuted transcript of the tape recording of Mr. Berg's deposition.

23. Two of these meetings between R. L. Berg and Victor Bergelson took place in Philadelphia, even though Mr. Berg's office is located in Detroit. Frank Maiorana was not aware of any of these meetings between R. L. Berg and Victor Bergelson. This action was discussed, states Mr. Berg. See Exhibit L.

24. During 1967-8, GMAC had refused to provide financing for a line of rental cars to Nabcor, when Frank Maiorana was known by GMAC and GM to be in control of Nabcor, even though GM franchisee Matt Slap had requested the line pursuant to a GMAC plan available to GM franchisees and their customers.

25. On or about February 15, 1972, Victor Bergelson together with a few members of his Bergelson Group entered Nabcor's offices at 101 Benson Manor, Jenkintown, Pennsylvania (several blocks away from the CAL offices) and under gun point, threatening several Nabcor employees, removed Nabcor's filing cabinets and business records (including documents relating to this action). Several days thereafter, Frank Maiorana had Bergelson and 5 other members of his Bergelson Group arrested for stealing and armed robbery. A newspaper clipping describing the arrest was transmitted by GMAC's Philadelphia office to GMAC's D. L. Dooley who, on March 14, 1972, sent the clipping to GMAC's Bradley and on March 17, 1972 sent a copy by mail to John C. Thede, Esq. General Motors Legal Counsel. (See Exhibit M hereto, a copy of GMAC's Dooley's letter to GMAC's Bradley with a copy of the newspaper clipping annexed.)

26. On March 15-16, 1972, GMAC's Bradley stated that GM's Chevrolet Division had rejected Victor Bergelson's requested moratorium on payments to GMAC (or GM). On March 16, 1972, GMAC's

> "Mr. Pringle called Mr. Berg who advised that the 'no revision' decision may have been a bad one. ... Mr. Berg called Mr. Dykstra to advise that Chevrolet had reconsidered and would approve a 60 day extension of monthly principal payments. ... Nabcor statement will be slowed as Mariano was fired by Bergelson interests and has sued them in civil action. ... Board (4) fired Mariano as President, authorized moving offices to Jenkintown, and after consulting legal counsel, moved most of NABCOR records to new office. Mariano filed criminal action against the four men and then had them arrested. Both civil and criminal actions pending with hearings scheduled next week. Mariano retains some NABCOR records and as soon as these are secured, audit of NABCOR will be completed and statement forwarded." (Exhibit N hereto, a copy of a memorandum from R. E. Bradley dated March 15-16, 1972.)

A copy of this memorandum was sent to GM's R. L. Berg and J. C. Thede, Esq., of the GMC Legal Staff, among other persons.

26A. On March 17, 1972, GMAC's Bradley wrote a letter to Bergelson, c/o CARZ, Inc., to

> "confirm our telephone conversation of yesterday regarding a sixty day moratorium on the monthly principal payments due GMAC." (See Exhibit O hereto, a copy of a letter from GMAC's Bradley to Bergelson, dated March 17, 1972, with copies to GM's R. L. Berg and J. C. Thede, Esq., of the GMC Legal Staff, among other persons.)

27. On or about March 20, 1972, a March 10, 1972 Dun & Bradstreet Report on the two civil actions by Nabcor and the Bergelson Group was reviewed, apparently, by one or more GM or GMAC officials interested in the Nabcor-Bergelson controversy. (See Exhibit P hereto.)

28. On April 7, 1972, Bergelson sent CARZ, Inc. and (apparently) Nabcor financial statements to GMAC's Bradley. (See Exhibit Q hereto.) Of course, financial statements prepared by Bergelson for Nabcor could have no authenticity, as GM and GMAC had to be well aware under the circumstances.

29. By letter dated May 17, 1972 (Exhibit R hereto), GMAC's Bradley advised GMAC's Davey (with copies to J. C. Thede, Esq., GMC Legal Staff, among other persons) that

> "The original investors in Consumers Auto Leasing (Bergelson, Rappaport, Dion, et al) found it necessary to buy back their company from the NABCOR group (Mariano) as the combined management team was torn with dissension. This repurchase required $70M in cash from a combination of CARZ and the Bergelson group.
>
> "Mariano is no longer connected with the CARZ organization but NABCOR remains as a guarantor of the lease outstandings as the guaranty was executed while the companies were consolidated. Ultimate collection of this guaranty, if necessary, would be doubtful as NABCOR's only asset is reportedly the $70M.
>
> * * *
>
> "... The $150M in long term debt is due Celina Mutual Insurance Company.
>
> * * *
>
> "... A great deal of time was devoted to the dissolution with NABCOR as the matter involved the courts because Mariano had members of the Bergelson group arrested for stealing the company records.
>
> * * *

> "... The branch considers this account in the process of liquidation as additional financing is not contemplated at this time and the principals have been so advised."

I might note that GM-GMAC evidently did not consider Frank Maiorana or Nabcor as "principals" for purpose of being advised in accordance with the above.

30. The foregoing ¶¶ 17-29 reveal a clear-cut case of conspiracy by GM, GMAC and the Bergelson Group to take away control of Nabcor from Frank Maiorana and terminate the Nabcor action against GM and GMAC and the other defendants. What makes this even more outrageous is that this was done in furtherance of the GM Defendants' unlawful attempts to defeat the class action, to prevent the 250 Nabcor franchisees from having their day in this Court. The financing GMAC would not provide to Nabcor when controlled by Frank Maiorana GMAC made available to persons who attempted to take over Nabcor by gun point and were arrested for such activities, and who had previously indicated their intentions to GM-GMAC of termination this action in the event they obtained the requested financing from GM-GMAC. This unique "litigation" tactic by GM-GMAC should not be condoned by this Court, it is needless to say.

31. It should be noted that GM's Legal Staff was kept informed of these developments. It is also safe to assume that such counsel informed GM's attorneys in the subject action (Messrs. Paul, Weiss, Rifkind, Wharton & Garrison) of these developments, including the default by Nabcor and CARZ in payment of the $150,000 Celina note and the consequent confession of judgment against Nabcor entered by Celina in the Ohio courts. Mr. Kaplan made known to affiant shortly after the gun-point incident of his awareness of the troubles Nabcor was having with the Bergelson Group, information which it now seems had to come from GM. Nevertheless, Mr. Kaplan (of the Paul, Weiss firm) made representations to this Court by his Motion to Dismiss, dated March 25, 1974 (Exhibit S hereto) that he and his firm were unaware of the Celina judgment

against Nabcor until service of a Notice of Attachment by Celina. (See Exhibit A hereto, a copy of plaintiffs' Cross Motion and affidavit in support thereof, relating to this Celina episode.)

32. It would be interesting to learn from the GM Defendants how Celina learned which of the 63 named defendants herein were still in the action as of the date of the Celina attachment, to be served with a meaningful attachment order.

33. If the facts set forth in ¶¶ 17-32 above are proven at a hearing on this motion, a partial summary judgment should be entered against GM and GMAC on the issue of liability alone, for reasons set forth in the Notice of Motion.

34. Another example of Defendants' Strategy of Strangulation and economic aggression against Nabcor is Defendants' insistence that affiant go to Detroit, Buffalo and other cities to depose employees and officers of GM-GMAC, even though GM-GMAC and possibly one or two other defendants wind up paying substantially higher legal fees and expenses than the total cost of having the witnesses be deposed in New York, where plaintiffs' out-of-pocket costs would be negligible if anything at all. This higher cost to the GM Defendants and other defendants, possibly, can be calculated with certainty, and can have no justification in this litigation other than this Strategy of Strangulation and economic aggression against Nabcor and Nabcor's counsel, adopted by the GM Defendants to subvert plaintiffs' right to have a fair and speedy pre-trial proceeding and trial.

35. The costs of this action (including the value of the time expended by plaintiffs' counsel) have been very high on both sides. Plaintiffs

have met most of these costs by the efforts of plaintiffs' counsel, working at all times solely on a contingent basis. Affiant himself has worked on this acti since June, 1970 (an aggregate of 55 months), for an aggregate of 10,000 hours, approximately. Others working for affiant have also put in thousands of hours on this action. The value of this massive effort may approximate $2,000,000 if billed and paid periodically over the 55 months. The value of the legal and paralegal time put in by the GM Defendants and the other defendants in their defense should well exceed this amount, perhaps amounting to $5,000,000-$10,000,000 (at least when all the litigation expenses of the GM Defendants and the other defendants are taken into consideration).

36. Almost all of this amount (estimated by affiant to be in excess of 90-95%) has been picked up by GM, apparently, as evidenced by various facts set forth throughout this affidavit. This, together with the implied indemnification arrangements, has reduced the other defendants to persons not having any substantial interest in this litigation, and has amounted to a fraud on plaintiffs and this Court because of the GM Defendants' failure to advise that these other defendants had no substantial interest in either the maintenance or the outcome of the action. Much attention has been given by this Court to the alleged plight of the many small defendants who, as we now find out, had little or nothing to worry about or to burden them in connection with their sporadic participation or appearance in this action. The GM Defendants had a duty to advise plaintiffs and this Court that the other defendants were not real parties in interest in this action, so that the discovery and other matters could have been handled by plaintiffs and this Court with an understanding of the true status of the parties. Possibly this Court would not have vacated each of plaintiffs' 7 sets of extensive interrogatories, prepared and served at considerable expense, if this lack of burden on these other defendants had been known to this Court.

37. Details of these arrangements to indemnify and pay for legal fees and expenses are evidence of the conspiracy complained about as well as the continuation thereof. But the GM Defendants and the other defendants have failed to disclose these arrangements in defiance of the discovery rules, and have misdirected a lot of activities by the plaintiffs and this Court to the detriment of plaintiffs and the judicial system.

38. The financial and other involvement by the GM Defendants in this action is complete. The other defendants do very little for themselves. Even when the plaintiffs depose officers and employees of other defendants, such as the Better Business Bureaus, the GM Defendants obtain the duplicate copies of the tape cassettes and verify the accuracy of plaintiffs' transcript, presumably representing the GM Defendants, the Better Business Bureaus and all other defendants in the process and presumably without charging the other defendants any amount for such representation. Presumably all other expenses incurred in this "joint defense" by the GM Defendants for the alleged benefit of the other defendants as a virtual class are paid by GM and nobody else.

39. The GM Defendants attend every deposition and otherwise control virtually all motions, hearings and other activities in defense of this action. The GM Defendants represented to plaintiffs and this Court that they would "coordinate" the defense of this action. No representation was made that the GM attorneys would in fact be the attorneys for all defendants, or that GM would indemnify all other defendants in virtually every respect, as it appears by inference.

40. Any legal fees actually paid or incurred by any of the other defendants are presumably made up by GM through additional business or payments (such as advertising, increased payments on dealers' warranty claims, increased

compensating balances) given to the defendants or legal fees paid, possibly, on "other" matters, to make the defense of the defendants appear to some small extent, at least, to come out of the defendants' own pockets, as Mr. Kleinbard of Paul, Weiss, Rifkind, Wharton & Garrison has appeared to represent to this Court, at a recent hearing.

41. By not disclosing that the other defendants are not paying their fair share (or even any share in some cases) of the total costs of defending this action, the GM Defendants have deceived plaintiffs and this Court and have unduly prolonged this litigation.

42. Settlement offers made by plaintiffs to the other defendants can hardly be worthwhile to accept when these other defendants have no economic interest in the maintenance, settlement or "loss" of the action. The courts have a policy favoring settlement and a policy against unnecessary litigation, but the monopolistic power of GM is able to subvert these policies, to the detriment of plaintiffs and the entire judicial system. Delays in obtaining justice by other parties in unrelated actions can be blamed in part on GM's activities in interfering with plaintiffs' settlement attempts (for substantiall less than the anticipated cost of continued defense) and unduly prolonging this litigation, through the GM Defendants' Strategy of Strangulation and economic aggression against plaintiffs and plaintiffs' counsel.

43. GM is paying most if not all of the legal fees and expenses incurred by each of the other defendants in defending this action (it so appears based upon information and belief), and discouraging them from settling with plaintiffs (to be discussed in ¶¶ 48-71 below). Accordingly, there would appear to be a promise, implied or actual, that the GM Defendants (meaning GM, of course) will indemnify each of the other defendants from harm or loss if

plaintiffs should obtain a judgment against any of them. This is an inevitable inference to be drawn from the known activities of the GM Defendants, described in this affidavit. Mr. Kleinbard, counsel to the GM Defendants, recently denied in court, on behalf of all defendants in the action, that there were any such indemnification arrangements. Plaintiffs would like to ensure that none will develop and that none now in existence can be carried out at any future time, by the grant of a preliminary injunction enjoining any such arrangements or the carrying out of any such arrangements, directly or indirectly, whereby any of the GM Defendants would pay any judgments against any of the other defendants or post or guaranty payment of any supersedeas bonds or pay any supersedeas bond premiums in connection with any judgments in this action.

44. Therefore, to ensure that each party litigates as a real party in interest and not as a member of the GM monopoly and combination in restraint of trade and in violation of the civil rights of plaintiffs, plaintiffs request this Court to preliminarily enjoin the GM Defendants from indemnifying, directly or indirectly, any of the other defendants with respect to (a) payment of legal fees or expenses; (b) payment of judgments or settlement agreements; and (c) posting or guarantying of any supersedeas bonds or payment of any premiums therefor -- as requested in the Notice of Motion.

45. This preliminary injunction is needed to ensure that each of the other defendants is at all times a real party in interest as represented to plaintiffs and this Court throughout this action, and that each of such defendants is not a member of the GM monopoly or combination complained about by plaintiffs in their complaint.

46. There are various reasons for concluding that these other defendants are not real parties in interest:

(a) they are not paying any or most of their own legal fees or other expenses of litigation;

(b) they are not even attempting, in many instances, to defend themselves in this action; and

(c) they are not interested in settling with plaintiffs at an amount ($2,000 in the case of the 10 franchised dealers) substantially lower than the actual costs to be incurred in in properly defending themselves throughout the remaining pre-trial proceedings and anticipated 2-month trial in this action.

47. The circumstances are such that plaintiffs seek a preliminary injunction to realign the other parties defendant, and let each defendant make his decision on the basis of what's good for him is not necessarily in the best interests of GM.

48. On November 4, 1974, Lewis A. Kaplan, Esq., of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for the GM Defendants, asked affiant how much plaintiffs wanted to settle the entire action. Affiant discussed the matter with Frank Maiorana, President of Nabcor, and then advised Mr. Kaplan that plaintiffs would settle the whole suit at that time for $5,000,000. Plaintiffs received no indication that the GM Defendants had rejected or even heard about the offer. Having heard nothing from the GM Defendants, plaintiffs then raised the offer to $50,000,000, a far more realistic settlement amount, which is still substantially less than the amount of damages (after trebling, etc.) which plaintiffs believe they can prove at trial.

49. Within the next few days after making the $5,000,000 offer, affiant made various individual settlement offers on behalf of plaintiffs to individual defendants (except Ford), as follows:

Date	Defendant (1)	Attorney	Amount
11/7/74	Chrysler Corporation	Bud G. Holman	$ 35,000
11/8/74	Gotham Ford	Ulric Sullivan	3,000
"	Grand Ford	" "	3,000
"	Robin Ford Sales	" "	3,000
(later)	New York News	Jim Leader	20,000
"	Newsday	" "	20,000
11/7/74	All 3 Better Business Bureau defendants	Leonard A. Mentzer	(2) 100,000
11/8/74	Citibank	Edward Boyle	25,000
11/8/74	Luby Chevrolet	Herbert K. Kanarek	3,000
11/7/74	Paragon Oldsmobile	Sidney A. Weisberg	3,000
11/7/74	Bob Bain Chevrolet	Joseph C. Tisdall	3,000
11/8/74	Paul Batt Buick	Ross L. Runfola	3,000
11/8/74	Glen Campbell Chevrolet	Isadore Snitzer's secretary	3,000
11/8/74	Kem Dengler Chevrolet	Stephen Teret	(3) 3,000
11/7/74	Hamister-Gillogly Chevrolet	Joseph L. Watson	3,000
"	Niagara Frontier Automobile Dealers Ass'n	" " "	5,000
11/8/74	Al Maroone Ford	Salvatore J. Messina	3,000
11/8/74	Better Business Bureau of Western New York	David K. Floyd	15,000
11/8/74	Buffalo Courier-Express	Alvin M. Glick	10,000
11/6/74	Westchester-Rockland Newspapers	William H. Morris	10,000
11/8/74	Bano Buick	Howard F. Ordman	(3) 3,000
"	Marty Motors Corp.	" " "	(3) 3,000
"	Mark Buick Corp.	" " "	(3) 3,000
11/8/74	Ruckle Pontiac Co.	Roger Waldman	(3) 3,000
(prior)	New York Times	Floyd Abrams	(no amount)
11/7/74	American Motors Corp.	Jay A. Herbst	25,000

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(1) The only defendants not receiving individual offers of settlement from plaintiffs were Ford and the GM Defendants. (The New York Times got an indication of willingness by plaintiffs to settle on an individual basis, at defendant's request, although no amount was discussed.) Also, see note (2) below.

(2) Not an individual offer to the three Better Business Bureau defendants, except the $15,000 offer to the Better Business Bureau of Western New York.

(3) Each of these 5 GM franchisees subsequently settled for $2,000 each, an amount tantamount to settlement upon no payment at all, thereby not too deviant from the policy of the GM Defendants.

50. On or about 11/12/74, Paul, Weiss, Rifkind, Wharton & Garrison on behalf of the GM Defendants, sent a letter to the attorneys for all other defendants, stating in substance:

(a) plaintiffs were attempting to settle the action with various defendants;

(b) the GM Defendants were outraged at plaintiffs' attempts to settle the action for such small amounts, in comparison to the $5,000,000 amount offered to the GM Defendants in settlement of the whole action, as a package deal;

(c) plaintiffs would be using any settlement proceeds as "seed money" in maintaining and continuing the action against the GM Defendants;

(d) plaintiffs' offers, if accepted, would have the effect of splitting off the GM Defendants (and Ford, presumably), who would then be required to fight plaintiffs alone in this action without the benefit to the GM Defendants of having the other defendants in this action; and

(e) the GM Defendants urged each of the other defendants' attorney to contact Paul, Weiss, Rifkind, Wharton & Garrison before making any agreements with plaintiffs' counsel to settle the action.

51. About 1 week later, in the middle of November, 1974, a meeting of various defendants' counsel was held with one or more attorneys from Paul, Weiss, Rifkind, Wharton & Garrison, according to the attorneys for one of the defendants, to discuss the various settlement offers made by plaintiffs to the other defendants, as described in ¶ 49 above. It was made known by the GM Defendants to these other defendants' counsel during such meeting that the GM Defendants did not favor any of plaintiffs' settlement offers to them, and that the GM Defendants were strongly opposed to any such settlements.

52. Presumably the offers of settlement and the position of the GM Defendants were communicated by the attorneys to each of the other defendants.

53. Subsequently, 5 GM franchisees agreed to settle, at $2,000 each, an amount which is tantamount to release from the action without payment, which settlements the GM Defendants did not even favor. Ford appears to be maintaining even tighter control of its franchisees because none of the 4 Ford franchisees (3 of whom happen to be represented by Ford's counsel, Sullivan & Cromwell) appear to be even remotely interested in settling for the nominal $2,000 amount. Nor have they been remotely interested in defending themselves throughout the past 4 years. (Al Maroone Ford served a set of interrogatories several days ago, which are about 1 year too late, now that the matter is almost at trial.)

54. Attorneys for several GM franchisees who favored settlement at the outset advised me that their clients would have to get GM's approval before being able to settle. At least 2 of them, apparently, were not able to get GM's approval. Affiant would like to have full disclosure of each of such communications between GM and any GM franchisees or other defendants, pursuant to this motion, by appropriate order of this Court.

55. Settlement negotiations with the New York Times Company, New York News, Newsday and Westchester-Rockland Newspapers, *which were initiated by them*, have come to a complete standstill *after, and as a direct result of*, this interference by the GM Defendants with plaintiffs' settlement negotiations.

56. This interference also spread to another action, in which the GM Defendants are not even parties. In *National Auto Brokers Corp. et ano. v. New York News, Inc., et al.*, 70 Civ. 5421B, each of the defendants (who are also defendants in this action against GM et al.) stopped negotiations, an interference which could hardly be privileged for the GM Defendants inasmuch as they are not even defendants in such action (relating to the 15% agency commission granted by the defendant newspapers to recognized advertising agencies).

57. The GM Defendants have the ability by virtue of GM's purchasin power and monopolistic position in the automobile industry to influence each of the other defendants not to settle, especially where the settlement would provide funds to plaintiffs in defiance of the GM Defendants' announced objectives, to the other defendants by letter and meeting at least, of their Strategy of Strangulation of, and economic warfare against, Nabcor and Nabcor's counsel.

58. GM, Ford, Chrysler and American Motors and the defendant franchised dealers of GM and Ford place millions of dollars of advertising each year in newspapers published by the 5 newspaper defendants herein (the 4 named in ¶ 55 above and the Buffalo Courier-Express). The August 26, 1974 edition of *Advertising Age* states that GM ranked 4th in 1973 in advertising placed in all media, running $34,500,000 in newspaper advertising during 1973; Ford

ranked 8th, running $18,900,000 in newspaper advertising during 1973; Chrysler ranked 11th, running $3,100,000 in newspaper advertising during 1973; and American Motors ranked 86th, running $1,300,000 in newspaper advertising during 1973. The franchised dealers of these 4 automobile manufacturers collectively ran $120,000,000, based on an assumed $15 per car advertising allowance on an assumed 8,000,000 cars during 1973, and spent at least several times as much on an individual basis, based on affiant's information and belief. Thus, GM, the other automobile manufacturer defendants and their franchised dealer defendants herein place a substantial amount of advertising in various newspapers throughout the country, including the 5 newspaper defendants. Any suggestions to these newspapers by GM not to settle without GM's approval is immediately translated into a threat of loss of some or all of this substantial advertising revenue, an effective but illegal reciprocal business practice by GM.

59. GM and/or GMAC admittedly have compensating balances on deposit with defendant First National City Bank ("Citibank"), according to Martin Kleinbard, Esq., of Paul, Weiss, Rifkind, Wharton & Garrison, at a hearing in this action before Honorable Thomas P. Griesa on October 10, 1974 (and presumably the other automobile manufacturer defendants as well). These compensating balances are interest-free deposits maintained by GM-GMAC with Citibank and constitute a very profitable source of revenue for Citibank (as well as hundreds of other leading banks in the United States).

60. These compensating balances are a major source of income which Citibank would risk losing if it should go against the GM Defendants' wishes and settle the actions with plaintiffs. In fact, bowing to demands of GM and the other automobile manufacturers, Citibank refuses to provide indirect financing for used-car customers of franchised dealers if the franchised dealer

is selling too many used cars, based on the automobile manufacturers' standards a policy that favor nobody except GM and the other automobile manufacturer defendants. This policy inhibits the market for used cars, and keeps the franchised dealer selling new cars rather than the more profitable used cars. For Citibank's restriction in this respect, see page 80 (at line 16) of Bader's unexecuted transcript of 10/4/74 deposition and Plaintiffs' Bader Exhibit 1 annexed hereto as Exhibit T. The Bader Exhibit, a Memorandum dated November 9, 1966 re: "Guide line Ratios employed in Quality Control of Automobile Dealer Paper" states in part as follows:

> "2. A relationship is becoming unsatisfactory if the proportion of used car deals begins to exceed a ratio of one for one with new car deals. A more normal ratio is 2 to 2 1/2 while some of our most productive dealer relationships produce even better ratios."

This memorandum was addressed to Mr. Bader. When affiant asked him the reason for this restriction, Mr. Bader replied:

> "A. I couldn't tell you. I don't know. That's the ratio that they set up in that department. Why, I haven't got the slightest idea." (p. 80, Bader Transcript - unexecuted.)

Mr. Bader, from 1965 to his retirement, was the Assistant Manager, in Charge of the development of new business for the Indirect Auto Section of Citibank. The memorandum was in effect a direction not to develop the business of financing used cars, except to the limited extent allowed (for franchised dealers only).

61. Also, see Exhibit U hereto, Plaintiffs' Citibank Exhibits 11-12, two copies of an April 25, 1967 memorandum by R. Fredricksen, Manager of the Greenville Branch of Citibank, in which he stated in part:

> "I intend to tell Frank that we are not at all interested in handling auto dealer paper for other than a factory authorized new car dealer. I will also suggest that he close his account with us and consolidate balances at the bank where he is getting the dealer service he desires."

62. Thus, Mr. Fredricksen told Frank Maiorana, President of Nabcor, that Citibank would provide indirect customer financing only to franchised dealers, a policy which others in Citibank now dispute. (Indirect customer financing is where the car dealer has the prospective purchaser fill out a credit application in the dealer's place of business, usually; the dealer calls in the credit information to the bank and with 24 hours or so gets approval by telephone from the bank; then the dealer sells the car to the customer and accepts a note from the customer in payment therefor; then the dealer discounts the customer's note with the bank and receives from the bank a portion of the interest to be paid by the new-car customer to the bank (called "reserves", from the days when the dealer guaranteed the customer's note).

63. Citibank's interest-free deposits by GM can't be jeopardized by settlement with plaintiffs in disregard of the announced desires and objectives of the GM Defendants. This is a clear-cut case of extension of GM's monopoly, which should be enjoined. This tactic of GM is as illegal as having GM provide its sales personnel with computerized lists of GM's purchases from other companies, for the purpose of "encouraging" these companies to purchase their new-car requirements from GM retail stores or from GM franchised dealers.

64. GM and Ford have control over their defendant franchisees as plaintiffs have attempted to show at various times throughout this action. See affidavits of William G. Kemp, sworn to April 9, 1973 (Exhibit V hereto); Lawrence F. Kelleher, sworn to April 7, 1973 (Exhibit W hereto); Frank Maiorana, sworn to March 4, 1973 (Exhibit X hereto, without exhibits); Carl E. Person, sworn to March 23, 1973 (Exhibit Y hereto); and Carl E. Person, sworn to April 10, 1973 (Exhibit Z hereto); all filed in support of plaintiffs' prior motion for a preliminary injunction.

65. By its control over GM franchised dealers in the Buffalo area GM exercises sufficient control over defendant Niagara Frontier Automobile Dealers Association, most if not all of which GM franchisees are members of th dealers association, presumably.

66. The defendant newspapers, Citibank and franchised dealers of the defendant automobile manufacturers are dominant on the boards of directors of the Better Business Bureau of Metropolitan New York and presumably the othe 2 defendant Better Business Bureaus, and supply a substantial amount of financing and valuable publicity to them as well. Therefore, pressure on the defendant newspapers, Citibank and franchised dealers by the GM Defendants is the same as direct pressure on these Better Business Bureaus by the GM Defendants.

67. GM has control over Ford, Chrysler and American Motors because of GM's profit margins, which give sufficient room for GM to be able to drop its wholesale new-car prices to a point where Ford, Chrysler and American Motors would be forced to go out of business. This is substantial evidence of GM's monopolistic control of the new-car market, which plaintiffs offer to prove. It should be noted that American Motors does not even have independent counsel in the Southern District in this action, and has chosen to be "represented" by Ford's attorneys, presumably without cost. Various America Motors dealers now obtain floor-plan financing from GMAC (a company well known for providing financing to only the dealers of GM until its deal recently with American Motors); and many American Motors cars are now being transported by Ford's carrier, Nu-Car Carriers, to give the appearance that American Motors is still in competition with GM and, possibly, Ford. Because of GM's monopolistic power, the announced desires and objectives of GM in this action are being carried out by Ford, Chrysler and American Motors, in an illegal use and extension of GM's monopolistic power.

68. With monopolistic control over the other automobile manufacturers, and substantial economic control or influence over each of the other defendants, as aforesaid, the announcement by letter and meeting to the other defendants to the effect that the GM Defendants are outraged or displeased with attempts by plaintiffs to settle the action with the other defendants (except Ford), is a veiled threat or strong suggestion to cease any negotiations, which is what has happened in most instances. Not even a reply from some of the defendants. A clear-cut case of conspiracy and extension of GM's monopoly, in furtherance of the conspiracy and monopoly alleged in the complaint. By its unsolicited communications to the other defendants' counsel, the GM Defendants illegally interfered with plaintiffs' negotiations and should be enjoined, during the pendency of this litigation, from any further interference with attempts by plaintiffs or other defendants to settle the action.

69. This unsolicited interference by the GM Defendants is an extension of GM's monopoly, is not privileged under the circumstances, and is unnecessary for the proper defense of the action by the GM Defendants. These acts by the GM Defendants, as a continuation of the conspiracy alleged in the complaint, are evidence of the GM Defendants' conspiracy against Nabcor and the other plaintiffs alleged in the complaint.

70. Several days prior to December 5, 1974, I reported this interference with plaintiffs' settlement attempts by telephone to the Justice Department of the United States and, at its request, followed up with a statement, which I mailed to the Justice Department on December 5, 1974. A copy of the statement is annexed hereto as Exhibit AA, entitled:

> "Statement relating to GM's interference with Nabcor's attempts to settle the Nabcor action with various defendant franchised dealers (of GM and Ford) and other defendants for nominal amounts of money".

I requested that a grand jury be convened.

71. The amounts offered in settlement by plaintiffs are small in relation to the estimated costs (including legal fees and disbursements) which each of the defendants (a) should have paid in the past, or (b) should incur in the future, respectively, assuming such defendants were picking up most of the cost of their own defense. Of course, when the GM Defendants pick up the costs, as they appear to have done for the past 4 years since commencement of this action, the proposed settlement amounts are substantially higher than the anticipated out-of-pocket expense to the "defendant" in continuing this "litigation", and any such settlement expense is rendered totally useless and unnecessary when the GM Defendants indemnify them against any ultimate loss resulting from their continued "litigation", as they appear to have done, directly or by clear inference and implication.

72. Because all or a substantial part of the expenses for defending this antitrust litigation are being covered by GM, the other defendants have no real interest in the action, and are being represented by the GM Defendants as a virtual "class", without this Court's approval and in violation of Rule 23 of the Federal Rules of Civil Procedure, and in illegal continuation of the conspiracy alleged by plaintiffs in their complaint. The time of the plaintiffs and this Court is being wasted by the GM Defendants because of the obvious futility in litigatin with 34 (now 29) defendants who have no interest in the outcome of this action.

73. Under the foregoing circumstances at least, plaintiffs have a right, under the Federal Rules of Civil Procedure, other law and the ethical considerations and disciplinary rules of the legal profession, to have each of the defendants be represented herein by independent counsel, and to have each defendant be a real party in interest. Otherwise, appropriate orders should be entered by this Court for the continued conduct of this litigation as, for example, service of papers on counsel to the GM Defendants alone.

Service of papers on all "parties" has been a major burden to plaintiffs during the past 4 years as has been the answering of interrogatories propounded by persons who appear to have no interest in the outcome of the action. These interrogatories are to be served only by parties to the action, and plaintiffs submit that the conduct of this action to date makes most of the named defendants something other than parties -- perhaps closer to members of a class of defendants being represented by the GM Defendants, in violation of the Federal Rules of Civil Procedure, Rule 23.

74. Many of the alleged defendants have taken virtually no steps whatever to represent or defend themselves in this action (other than the mere filing of a virtual copy of somebody else's answer, except that in one instance -- Luby Chevrolet -- the defendant has served no answer and has not responded to plaintiffs' request for document production). Almost none of the defendants have moved for a summary judgment, served interrogatories, served a notice to produce, served a request for admissions, or attended any of the numerous depositions of Frank Maiorana, Anthony Maiorana or other Nabcor witnesses to ask questions relating to plaintiffs' claims against them. Nor have the GM Defendants even attempted to provide adequate representation to these defendants, based on the foregoing. Instead, these other defendants have been riding along at GM's expense for 4 years, with almost no effective legal representation in this action, letting the GM Defendants perform all or most of the legal and related work and pay all or most of the expenses. Yet. from time to time, these other defendants have come into this Court to complain, successfully, about how "burdensome" this litigation has been to them. This has been a substantial fraud on this Court, and has been an enormous burden to plaintiffs. Plaintiffs seek an injunction to stop this costly fraud and deception, to enable plaintiffs to have a fair and speedy pre-trial proceeding and trial.

75. The most recent "burdensome" presentation by a defendant was made by Thomas Shaw, Esq., partner of Breed, Abbott & Morgan, representing the Better Business Bureau of Metropolitan New York and, it appeared thereat, the Better Business Bureau of Western New York (normally represented in this action by a Buffalo law firm)[1] during a hearing on November 26, 1974. Mr. Shaw complain of the "burdensomeness" of this antitrust action and the diversity action broug by Nabcor alone against these two Better Business Bureaus and an individual (not a defendant herein). This new action, based on fraud and prima facie tort, was commenced on October 21, 1974 in the Eastern District of New York. Alleged burdensomeness was the primary reason offered for requesting that the Eastern District action be consolidated in the Southern District with this action. Actually, as I found out from an attorney for the Better Business Bureau of Western New York, his client has not paid one red cent in legal fees (or other expenses, presumably) in either action from the commencement of this action in December, 1970 to the present. To have plaintiffs continue this kind of litigation is a denial of a fair and speedy pre-trial proceeding and trial. It is a deceptive attempt by the GM Defendants to misdirect the energies and limited assets of Nabcor and Nabcor's counsel and should be enjoined.

76. Plaintiffs have a right to have each defendant defend himself with his own counsel without continuation of the illegal monopoly and conspiracy, on the merits of the case against such defendant. This is needed to give plaintiffs a fair and speedy pre-trial proceeding and trial and to give the judicial policy encouraging settlements an opportunity to resolve this massive litigation in a manner equitable to plaintiffs, this Court and the other defendants themselves. GM has no right (i) to prevent plaintiffs from utilizing this judicial policy of favoring settlements, or (ii) to continue the illegal comination and conspiracy to keep Nabcor out of business and prevent plaintiffs from obtaining a permanent injunction, through the GM

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(1)Phillips, Lytle, Hitchcock, Blaine & Huber, GM's local counsel in Buffalo, according to Martindale-Hubbell.

Defendants' Strategy of Strangulation and related acts of economic aggression, under the pretense of "litigation" and "defense". The GM Defendants should be enjoined from a continuation of this outrageous approach to defending themselves in this action brought by plaintiffs including Nabcor, a company which has very little if nothing in assets, as found by this Court.

77. Because of the GM Defendants' failure to reveal the real parties in interest or the "class" nature of their defense, plaintiffs have been damaged by the needless time and expense incurred in litigation with the other defendants, including the service of copies of all documents on the defendants, the preparation and service of extensive interrogatories and other documents, communications with counsel and other activities, and plaintiffs seek through this motion an order directing that the GM Defendants pay plaintiffs and plaintiffs' counsel for the wasted time and expenses in connection therewith, in accordance with § 2000e-5(k) of the Civil Rights Act, 42 U.S.C.A. § 2000e-5(k), § 4 of the Clayton Antitrust Act, 15 U.S.C.A. § 15, Rule 37 of the Federal Rules of Civil Procedure and the inherent power of this Court, in accordance with ¶ (4) of the requested order; and that an appropriate part of such payment shall be trebled pursuant to said § 4 of the Clayton Antitrust Act.

78. **WHEREFORE**, affiant on behalf of plaintiffs prays that the motion for a preliminary injunction, a partial summary judgment on the issue of liability alone and for other relief be granted, as set forth in the Notice of Motion.

Carl E. Person

Subscribed and sworn to before me
this 8th day of January, 1975.

Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4600212
Qualified in New York County
Commission Expires March 30, 197[illegible]

Okay before [illegible] [illegible]
Mornings of July 12th week

A 1696

Mailed 7-7

LAW OFFICES
ZENOFF, WESTLER, JONES & KAMM

A. J. ZENOFF
MURRAY WESTLER
CHRISTOPHER E. JONES
ROBERT M. KAMM
JEROLD JAY SHAPIRO

53 WEST JACKSON BOULEVARD, SUITE 744
CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

June 15, 1971

Mr. Claude Flanagan
421 Mcaree Road
Waukegan, Illinois

Dear Mr. Flanagan:

Since receipt of the Wall Street Journal news item from you relative to the suit of Nabcor vs General Motors Corp., I have been in touch with the New York attorneys for General Motors Corp. They are most interested in talking with you and the other people in our area who bought franchises from Nabcor. They feel that if they can prove fraud, it will not only help their defense of the lawsuit, but that it might focus the attention of the "authorities" upon the actions of Nabcor.

I cannot guarantee that a discussion with General Motors will help any of you, but they would like to talk to all of you and will make a trip from New York City to my offices to meet with you.

If you are interested, I shall be happy to arrange a convenient date for everyone to meet in my offices. Please let me hear from you.

Copies of this letter are being sent to the people listed below and it shall constitute a request to them to advise me of their desires, as well as I would appreciate an expression from you.

Very truly yours,

A. J. Zenoff

A. J. Zenoff

AJZ/msk

Mr. Luke Austin - 1600 St. Charles Road, Maywood, Illinois 60153
Mr. W. D. Watson - 411 S. 18th Avenue, Maywood, Illinois 60153
Mr. Wilbert Taylor - 8843 South Blackstone Avenue, Chicago, Illinois
Mr. Philbert Wilcox - 1930 S. 16th Avenue, Broadview, Illinois
Mr. Warwick Occomy - 233 E. Marquette Road, Chicago, Illinois
Mr. Randall Lewis - 9731 Parnell Avenue, Chicago, Illinois
Mr. Robert Myers - 2525 W. Peterson, Chicago, Illinois 60645
Mr. Alfred H. Moore - 6048 W. Nelson, Chicago, Illinois
Mr. Donald Kurtz and Mr. David Rose - 10001 Oak Ave., Gary, Indiana

A 1697

COPY

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CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

August 12, 1971

Mr. Claude Flanagan
421 Mcaree Road
Waukegan, Illinois

Dear Mr. Flanagan:

The General Motors Corp. attorneys are willing to meet with us during the week of September 13th, other than September 16th.

I can make it at 2:00 P.M. September 14th. Please let me know whether or not you and your group can be in attendance. I would expect you to contact the people you directly represent.

Sincerely yours,

A. J. Zenoff

AJZ/msk
cc: Mr. Alfred H. Moore - 6048 W. Nelson, Chicago, Ill.
Mr. Donald Kurtz and Mr. David Rose - 10001 Oak Ave.
Gary, Indiana

Please contact me if you can make it.

A 1698

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53 WEST JACKSON BOULEVARD, SUITE 744
CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

COPY

August 24, 1971

Paul, Weiss, Rifkind, Wharton & Garrison
Law Offices
345 Park Avenue
New York, New York 10022

Attention Mr. Lewis A. Kaplan

Re: Nabcor

Dear Mr. Kaplan:

I have just confirmed that a representative group will meet with you at our offices at 2:00 P.M. on September 14, 1971.

Please confirm promptly.

Very truly yours,

A. J. Zenoff

AJZ/mak
cc: Mr. Claude Flanagan - 421 Mcaree Road, Waukegan, Ill.
Mr. Alfred H. Moore - 6048 W. Nelson, Chicago, Ill.
Mr. Donald Kurtz and Mr. David Rose - 10001 Oak Ave.,Gary,In

A 1699

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JEROLD JAY SHAPIRO

53 WEST JACKSON BOULEVARD, SUITE 744
CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

C
O
P
Y

September 9, 1971

To: Mr. Claude Flanagan
421 Mcaree Road
Waukegan, Illinois

Mr. Alfred H. Moore
6048 West Nelson
Chicago, Illinois

✓ Mr. Donald Kurtz and Mr. David Rose
10001 Oak Avenue
Gary, Indiana

Re: Nabcor

Gentlemen:

The attorneys from New York just called me and stated that they cannot make the appointment scheduled for September 14, 1971, because of an emergency court action.

However, they would like to make the appointment for October 11, 1971, at 2:00 P.M. at my offices.

Please advise if that date is satisfactory to you.

Very truly yours,

A. J. Zenoff

AJZ/msk

Kurtz-294

D LOT - NOON MOR

Ent. A 1700

LAW OFFICES

ZENOFF, WESTLER, JONES & KAMM

A. J. ZENOFF
MURRAY WESTLER
CHRISTOPHER E. JONES
ROBERT M. KAMM
JEROLD JAY SHAPIRO

53 WEST JACKSON BOULEVARD, SUITE 744
CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

COPY

September 22, 1971

Mr. Lewis A. Kaplan
Paul, Weiss, Rifkind, Wharton & Garrison
Law Offices
345 Park Avenue
New York, New York 10022

Re: Nabcor

Dear Mr. Kaplan:

My clients have agreed to meet with you in my offices at 2:00 P.M., October 11, 1971.

Very truly yours,

A. J. Zenoff

AJZ/msk
cc: Mr. Claude Flanagan - 421 Mcaree Road, Waukegan, Ill.
Mr. Alfred H. Moore - 6048 W. Nelson, Chicago, Ill.
✓ Mr. Donald Kurtz and Mr. David Rose - 10001 Oak Ave., G
Indian

421 McAree Road
Waukegan, Illinois 60085
October 6, 1971

Mr. Luke A. Austin
Mr. Randall Lewis
Mr. Donald Kurtz
Mr. Alfred H. Moore
Mr. Robert Myers
Mr. Warwick G. Occomy
Mr. David Rose
Mr. Wilbert Taylor
Mr. W. Delano Watson
Mr. Philbert R. Wilcox

Dear Sir:

Mr. A. J. Zenoff has arranged a meeting between General Motors Corporation attorneys from New York City and persons invested in Nabcor Franchises from the Chicagoland area. It is their opinion that if they can establish evidence of fraud on the part of Nabcor, it will enhance our possibilities of obtaining favorable judgment in our case.

Your expressed desire will be acknowledged by your presence at:

53 West Jackson Boulevard
Suite 744
Chicago, Illinois 60604
(312) 922-5685

October 11, 1971 2:00 p.m.

"Nothing ventured, nothing gained."

Sincerely,

Claude C. Flanagan

CCF:sb

cc: Mr. A. J. Zenoff
Mr. Lewis A. Kaplan

A 1702

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 PARK AVENUE
NEW YORK, N.Y. 10022
TELEPHONE (212) 935-8000
CABLE LONGSIGHT N.Y.
TELEX 12-7631

RANDOLPH E. PAUL (1946-1956)
LOUIS S. WEISS (1927-1950)

JOHN F. WHARTON
ROBERT E. SAMUELS
COUNSEL

WASHINGTON OFFICE
1775 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202 293-6370
CABLE LONGSIGHT WASHINGTON

SIMON H. RIFKIND
LLOYD K. GARRISON
HOWARD A. SEITZ
ADRIAN W. DEWIND
RAMSEY CLARK
MORRIS B. ABRAM
MORDECAI ROCHLIN
PAUL J. NEWLON
JOSEPH S. ISEMAN
JAMES B. LEWIS
THEODORE C. SORENSEN
MARTIN KLEINBARD
RICHARD H. PAUL
NORMAN ZELENKO
JOHN E. MASSENGALE
JAY H. TOPKIS
EDWARD N. COSTIKYAN
ROBERT H. MONTGOMERY, JR.
JOHN C. TAYLOR, 3RD
BERNARD H. GREENE
ERNEST RUBENSTEIN
ALLAN B. ECKER
STUART ROBINOWITZ
JAMES L. PURCELL
ARTHUR KALISH
DAVID T. WASHBURN
BERNARD FINKELSTEIN
ARTHUR L. LIMAN
RICHARD R. DAVIDSON
SEYMOUR HERTZ
WALTER F. LEINHARDT
GERALD D. STERN
ANTHONY B. KUKLIN
MARTIN LONDON
DAVID C. BRODHEAD
PETER R. HAJE
LEONARD V. QUIGLEY
ALLAN BLUMSTEIN
NEALE M. ALBERT
JAY GREENFIELD
KEVIN J. O'BRIEN
ALFRED D. YOUNGWOOD
DONALD F. MOORE

WRITER'S DIRECT DIAL NUMBER

(212) 935-8646

October 15, 1971

A. J. Zenoff, Esq.
Zenoff, Jones, Kamm & Westler
53 West Jackson Boulevard,
Suite 744
Chicago, Illinois

Nabcor

Dear Mr. Zenoff:

Let me take this opportunity to thank you and your clients for your time, attention and cooperation last Monday. I look forward to hearing from you again after your clients have had a further opportunity to consider the matters which we discussed.

As I indicated to you on Monday, I am enclosing both a list of attorneys representing Nabcor Franchisees who have sued Nabcor on claims similar to those of your clients and a transcript of a deposition of Frank Maiorana taken in one of those actions.

As we acquire additional information which might be helpful to your clients we shall make it available to you.

Sincerely,

Lewis A. Kaplan

LAK:mp
Enclosures

BY HAND

Amount list
of
Damages

LAW OFFICES
ZENOFF, WESTLER, JONES & KAMM

A. J. ZENOFF
MURRAY WESTLER
CHRISTOPHER E. JONES
ROBERT M. KAMM
JEROLD JAY SHAPIRO

53 WEST JACKSON BOULEVARD, SUITE 744
CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

COPY

November 11, 1971

Mr. Claude Flanagan
421 Mcaree Road
Waukegan, Illinois
1-317-663-6132

Mr. Alfred H. Moore
6043 West Nelson
Chicago, Illinois

Mr. Donald Kurtz and
Mr. David Rose
10001 Oak Avenue
Gary, Indiana

Re: Nabcor

Gentlemen:

I enclose copy of a letter dated October 15, 1971, from Mr. Kaplan, the attorney whom you recently met and who represents GMAC.

Additional research of the law gives me the opinion that we possibly could file suit in our local federal court against Nabcor. I recently conveyed this idea to Claude Flanagan, who stated that he would check with all of you and advise me very soon as to whether or not you care to go ahead with the lawsuit. If you do, our firm will handle this on a percentage basis of 33-1/3% of the amount collected. However, all court costs and expenses will have to be borne by you. We would need approximately $300 to get the matter under way.

I would very much appreciate hearing from each of you as to whether or not you care to proceed, so that we can get our lawsuit prepared.

Mr. Flanagan stated that he would contact each of you and let me know.

Very truly yours,

A. J. Zenoff

A. J. Zenoff

AJZ/msk

A 1704

LAW OFFICES

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A. J. ZENOFF
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ROBERT M. KAMM
JEROLD JAY SHAPIRO

53 WEST JACKSON BOULEVARD, SUITE 744
CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

December 28, 1971

To:

Mr. Claude Flanagan - 421 Mcaree Road, Waukegan, Illinois
Mr. Luke Austin - 1600 St. Charles Road, Maywood, Illinois 60153
Mr. W. D. Watson - 411 South 18th Avenue, Maywood, Illinois 60153
Mr. Wilbert Taylor - 8843 South Blackstone Avenue, Chicago, Illinois
Mr. Philbert Wilcox - 1930 South 16th Avenue, Broadview, Illinois
Mr. Warwick Occomy - 233 East Marquette Road, Chicago, Illinois
Mr. Randall Lewis - 9731 Parnell Avenue, Chicago, Illinois
Mr. Robert Myers - 2525 West Peterson Avenue, Chicago, Illinois 6064
Mr. Alfred H. Moore - 6048 West Nelson, Chicago, Illinois
✓Mr. Donald Kurtz and Mr. David Rose - 10001 Oak Avenue, Gary, Indian

Gentlemen:

No [illegible]

I enclose a copy of a letter dated December 10, 1971 received recently from Lewis A. Kaplan, the attorney for General Motors Corporation. I have sent a copy of the article he refers to in his letter to Mr. Claude Flanagan, from whom you may obtain a copy, if you so desire.

I would appreciate it very much if each of you would indicate to me whether or not you want me to follow through on this matter or drop it. I have written several letters to Mr. Flanagan, Mr. Moore and Mr. Kurtz and Mr. Rose and I have had no reply.

Very truly yours,

A. J. Zenoff

AJZ/msk
enclosure

GENERAL MOTORS ACCEPTANCE CORPORATION A 3705
INTER-ORGANIZATION LETTERS ONLY

TO Detroit TEF Office ADDRESS Detroit, Michigan

FROM R. E. Bradley ADDRESS Dayton, Ohio

SUBJECT Charge-A-Car Systems, Inc. Dayton, Ohio DATE November 18, 1971

On November 11, 1971, a Mr. Joseph Rose and a Mr. Victor Burgelson of Consumer Auto Leasing, Ltd., North Park Drive, Pennsauken, New Jersey, visited the branch office in the company of two corporate officers of Charge-A-Car. During these discussions, it was revealed that Consumer Auto Leasing proposed to purchase all the assets of Charge-A-Car and assume the liabilities owed to GMAC on the rental and to Celina Mutual Insurance Company on the $150M loan.

Consumer Auto Leasing, Ltd. is a new company in the auto rental field and is associated with the U. S. distributor of the Japanese Subaru auto. This company proposes to increase the unencumbered capital base of the company to a minimum of $300M of paid in capital plus an additional $84M of subordinated debt. The attached financial statement, as of July 31, 1971, does not reflect these investments and the branch is in the process of securing current financial data which verifies these injections.

Consumer is desirous of expanding their operations through franchising of outlets throughout the country. They see the existing Charge-A-Car outlets as a great advantage and these facilities represent the primary value as far as they are concerned. While they are interested in an increased exposure for the Subaru, they are realistic and realize that a GM fleet is necessary for survival. They estimate that their final fleet will contain at least 70% domestic makes and the branch has already advised them that GMAC would not consider any non-GM financing accommodations.

Consumer has been negotiating with the investment banking firm of Kenneth Bowles, 42 Broadway, New York, for a public underwriting to secure about $1,000M in additional capital. This investment firm suggested a merger with an auto brokerage company called NAFCOR, for which the underwriters had recently handled an offering. This merger has been completed and Consumers is now a wholly owned subsidiary of NAFCOR. The officers of the firm are:

Herman J. Rappaport - Chairman - He recently sold a multi store

RECEIVED
NOV 22 1971
GMAC
DETROIT TEF

Exhibit D

chain of jewelry outlets for $2,000M. His experience in coordinating a retail chain is considered an asset to the company.

Victor Burgelson - Vice Chairman - A financial man with a background on Wall Street.

Frank Mariano - President - Has been both a new and used car dealer in the Philadelphia area. Before the merger, he was the major stockholder in NAPCOR which was an auto brokerage firm. His experience in auto sales is expected to prove valuable in the disposal of matured rental vehicles.

Jerry Trigger - Executive Vice President - Formerly associated with Hertz for 12 years and set up Hertz's Canadian operations. He would appear to provide a sound background in the car rental business.

Isadore Dion - Secretary-Treasurer - Owner of Penn Financial of Philadelphia. Reportedly has a personal net worth of about $5,000M.

Joseph Rose - Son of the principal at S. M. Rose Corporation - Chevrolet dealership - in New York City (Copy of Form 400 attached). Joe grew up in the dealership but may be personally estranged from his father at this time. Is reportedly a CPA and considered to be brilliant.

The above information is in the process of being verified along with obtaining certification that the net worth of the company consists of a minimum of $300M in unencumbered capital.

This new company is willing to take over the Charge-A-Car fleet and the outstanding vehicle debt. They have requested a 90 day moratorium on principal payments, from October 25, 1971, until January 25, 1972. This time has been requested to permit the purchase of the assets and provide the new operators time to become familiar with the details of the Charge-A-Car operation, before an instalment becomes due. Interest payments will continue during the interim, the operators agree that any excise tax rebate will be used to reduce vehicle debt when received, and no requests for additional financing will be made until principal payments resume.

Celina Mutual Insurance Company has agreed to release their lien against Charge-A-Car receivables and accept a debenture for $150M payable in three annual instalments of $50M, beginning November 1, 1972.

A spread of outstandings is attached for your information and review. The alternative to the extension is repossession of these units.

RECEIVED
NOV 22 1971
GMAC
DETROIT LEF

November 18, 1971

Charge-A-Car cannot pay and without the moratorium, the purchase of Charge-A-Car's assets will not be completed.

The branch recognizes that some risk is involved, however, the injection of a minimum of $300M to a non-existent credit base appears to justify the chance. The branch recommends approval of the moratorium of 90 days, subject to certification that the net worth of the purchasing company is at least $300M and verification that the officers' backgrounds are substantially as reflected above.

R E Bradley
Assistant Branch Manager

REB:nn
Encl.

cc - Mr. G. F. Kerr, Director
Special Financing, Executive Office

- Mr. A. K. Pringle, Regional Manager

RECEIVED
NOV 22 1971
GMAC
DETROIT TEF

File

Re: Charge-A-Car Systems, Inc.
Dayton Branch

This is to confirm that on December 16, 1971 a Mr. Victor Burgleson, vice chairman of Nabcor, contacted this office to discuss the tentative arrangements for Nabcor to acquire the assets of subject customer. In the process of negotiation these people had been advised by the Dayton branch that it would be necessary for them to pay all instalments currently delinquent, a total of approximately $84M, to secure approval for transfer and a 30 day extension. A request was made to defer any payments to GMAC until January.

Burgleson was advised that we could not consider complete deferment and in all probability the position previously stated by the branch would be upheld. He offered, as an alternative, to pay all past due interest or some other amount less than the requested $84M. We promised to investigate the possibilities and advise him of GMAC's position.

Today, it was determined after consultation with the Dayton branch, Detroit TEF Office and interested manufacturers that the position stated by the Dayton branch should be supported without change. Accordingly, Mr. Burgleson was advised that the delinquency (adjusted to $82,444.57 by payment in full on several sold cars) must be paid if GMAC is to accept the transfer and extend the account making the next payment due January 25. Based on arrangements previously made with the Dayton branch, the deadline for performance is Wednesday, December 22 to permit planned stockholders' meetings to be held.

Mr. Burgleson was not pleased and may yet have some alternatives he wishes to discuss. He has been referred to Mr. R. R. Dykstra, manager, Dayton for any further discussions on the account.

GFK

G.F.K.
12/17/71

GFK:sam
cc: R. R. Nelson
S. E. Johnson
A. K. Pringle
R. R. Dykstra
TEF Office

Exhibit E

February 23, 1972

Mr. Victor Burgleson
c/o CARZ, Inc.
Benjamin Fox Pavilion
Suite 309
Jenkintown, Pennsylvania

Dear Sir:

The difficulties encountered by GMAC in first obtaining your company's check for the January, 1972 principal instalment and secondly, obtaining clearance of these funds by your bank were both unexpected problems in view of your previous assurances of a smooth relationship between our firms. In view of the favorable rates being offered on this financing, it is not contemplated that any collection effort will be necessary on GMAC's part. It is therefore requested that future principal instalments be forwarded, in good funds, so that your remittance reaches our office on or before the 25th of each month. The next of these is due on February 25, 1972, and the billing has already been submitted to your Dayton office.

It is understood that you have decided to close the Dayton administrative offices of your firm and relocate these operations at the address to which this letter is being directed. Will you please sign and return the enclosed UCC-1 which we will then file in the appropriate jurisdictions in Pennsylvania in accordance with the sections of the Uniform Commercial Code dealing with inventory financing. Additionally, UCC-1's covering the other various locations were forwarded to your Dayton office recently and we request that these also be signed and returned as soon as possible. In view of the relocation of administrative functions of your firm from Dayton, will you please also confirm that future communications should be directed to Jenkintown or furnish us with alternate instructions.

Under the terms of our agreement, the refund of the excise taxes due Charge-A-Car on the eligible units were to be paid to GMAC. These amounts were to be used to reduce the final balloon instalments due on the respective units. Please accept this letter as a request for payment of these refunds as they are received. We have been advised that the checks from Chevrolet Motor Division have already been received and these amounts should be forwarded to GMAC promptly.

Periodically, GMAC audits the records of rental and leasing companies to

Exhibit F

determine that the collateral being financed remains in inventory, is properly maintained, and that the fleet is being utilized. During a recent audit, the following irregularities were discovered:

1. One unit, a 1970 Chevrolet Model 16447, Serial D116187, Stock Number 4220, was stolen from your Atlanta office some time ago and has not been recovered. Sufficient time has elapsed so that GMAC must now request payment in full for this car as the obligation due of $2,090.65 is no longer collateralized.

2. Another audit is presently being completed and to date, we have discovered that five units have been sold but GMAC has not been paid.

Note No.	Stock No.	Year	Make	Serial No.	Date Sold	Amount Due
119	5243	1970	Buick	227710	Unknown	$2,236.20
146	151682	1971	Olds.	129409	2/4/72	$1,941.65
148	111642	1971	Chev.	139565	2/14/72	$1,949.56
175	151695	1971	Chev.	170774	2/14/72	$2,040.91
180	111402	1971	Olds.	152971	2/4/72	$2,897.50
						[illegible]

Your prompt remittance for these and any other sold units is requested.

We have also determined that several units remain in body shops with either uncompleted repairs or are being held by the garage until payment by you is received. These items should be cleared promptly so that the cars may be returned to the fleet.

We have previously discussed your furnishing GMAC with audited financial statements, indicating the condition of CARZ, Consumer's Auto Leasing, and NABCOR. It was my understanding that these documents would have been received by this time, but such is not the case. These forms should be forwarded to this office as soon as they are available and if they are not yet complete, will you please advise us of the expected date of receipt.

It is recognized that the take-over of this fleet by your firm has been an undertaking of some magnitude. However, several occurrences, including those detailed above do not appear to indicate that your organization is performing in accordance with the terms, conditions, and/or spirit expressed in our various agreements and discussions. Your cooperation in these and future matters is respectively requested.

Very truly yours,

R. E. Bradley
Assistant Branch Manager

File

Re: Charge-A-Car Systems, Inc.
Dayton Branch

On 2/29/72 F. Connolly, ABM, Philadelphia branch, called inquiring about Charge-A-Car. He indicated that V. Burgelson of Charge-A-Car contacted him about having the account transferred to Philadelphia from Dayton. I briefly reviewed our file and suggested that Connolly call Dayton branch.

Today, I spoke with B. Bradley, ABM in Dayton. He stated that Burgelson has been leading up to a request for an additional extension. The account is past due for the February principal (approximately $39M), which was to have been paid today but was not. Burgelson called Bradley early this A.M. Bradley eventually inquired as to where the February payment was. Burgelson's response was that "a proposal was in the mail." Although Burgelson did not elaborate further as to the nature of the proposal, Bradley indicated that in previous conversation Burgelson had brought up the subject of a suit against GM by Nabcor. Bradley indicated to Burgelson that he was unaware of the details of any such suit. In Bradley's opinion, he feels that Burgelson is alluding to a suit and attempts to infer that Burgelson's alleged difficulties with GM-GMAC stem from his association with a suit against GM, may be part of the proposal which is submitted. In effect Bradley indicated that he is left with the impression that Burgelson's proposal may be to offer to drop a suit against GM in exchange for more favorable consideration in his request for further assistance from GM-GMAC in his present difficulties with Charge-A-Car.

Bradley was explicit in stating that his observations are purely speculative, based upon his conversations with Burgelson.

D.L.D.
3/1/72

DLD:sam

cc: J. Higgins - We are providing you with this information copy because of the relationship of the subject matter to pending or existing litigation.

Exhibit G

ABCOR

National Auto Brokers Corporation
Suite 309, Benjamin Fox Pavilion
Jenkintown, Pennsylvania 19046
215/885-4700

March 3, 1972

Mr. Robert Bradley
Assistant Manager
General Motors Acceptance Corp.
South Ludlow Street
Dayton, Ohio 45402

Dear Mr. Bradley:

After receiving your letter of February 23, 1972, I recognize that it is most essential to clarify the substantive points raised by your letter. As a result, I have prepared and enclosed a group of exhibits which not only present the historical operating results of Charge-A-Car for the year ended October 31, 1971, but also have presented the dramatic steps which we have taken to make Carz, Inc. a profitable business in a minimum period of time. I invite you to examine each aspect of these exhibits and determine for yourself the effectiveness of our action and the results which we expect to obtain by June of this year. I patiently invite you to examine Exhibit D since you make reference to the re-location of the administrative offices from Dayton to Jenkintown. This important step, which was accomplished in the last week or so, virtually eliminates the substantial loss which Charge-A-Car was incurring.

We did not enter into this enterprise, however, to operate a break-even business. I therefore refer you to Exhibits A, B and C wherein you can see that our Closing Schedule boils this business down to operations in four cities which generated, for the period ended October 31, 1971, $130,000 of net profits. If we are permitted to proceed with our program, we will have converted a car rental business operating at a substantial loss into a profitable business with a base profit of some $90,000, exclusive of revenues to be generated from our licensing program. I might point out that from our minimum efforts, we have entered into two firm contracts with franchisees of verified financial strength.

I should like now to review the circumstances surrounding our commitments to take over the operations of Charge-A-Car. You will recall that it was our opinion that the ingredient necessary to avoid a very substantial loss to GMAC, and to provide an attractive business opportunity for my company, that a 90 day moratorium of principal and interest was essential. Based upon our review of these matters in your office and your preliminary indication that this might be agreeable, we entered into a binding agreement with Celina Insurance Company. We further entered into negotiations to acquire the business of Charge-A-Car on a basis that would create the minimum exposure to us from previous liabilities incurred by Charge-A-Car.

Exhibit H

MR. KAPLAN: The antitrust laws don't require consistency.

MR. KLEINBARD: He told you what happens with your client, now what happens to franchised dealers is not important as far as I can see. And I direct him not to answer.

Q. Have you discussed United States Sales and Information Service with any person?

A. Not to my knowledge.

Q. Have you discussed Frank Maiorana with any person?

MR. KLEINBARD: Can you give us a point in time? And, of course, you mean other than with counsel?

MR. PERSON: Right.

Q. At any time, have you discussed Frank Maiorana with any person, to your recollection?

A. The name is familiar to me. I believe I discussed him with a fellow by the name of Bergelson, in connection with another matter, probably in '71 or maybe '72.

Q. Is that the only recollection you have of discussing Frank Maiorana with any person?

A. Yes, it is.

Q. Let's mark this Plaintiffs' Berg Exhibit 3 on 10/8/74, a copy of a telephone message dated 12/15/66 for Mr. Bob Berg, document number 150 of GM.

MR. KAPLAN: That assumes it's for Mr. Berg, Mr. Person, it doesn't necessarily mean that.

MR. PERSON: It has R. Berg at the top.

MR. KAPLAN: It has his name on it.

MR. KLEINBARD: Alright, let's ask the witness, and solve the problem that way.

Exhibit L

A. I believe he is the Branch Manager or Assistant Branch Manager in the Dayton GMAC Branch.

Q. You stated previously that you had one or more discussions with M Bergelson. Did any discussion with Mr. Bergelson take place before March 15, 1972?

A. Yes.

Q. Could you tell me what the discussions were about?

A. We had an operator down in Dayton who operated daily rental operations at a number of department stores throughout the country. His operation got into difficulty because he was undercapitalized. He had had discussi with Bergelson concerning either selling the company to him or Bergelson comi in.

Q. Do you know when those discussions took place?

A. No, but it would be in that general area.

Q. Was Mr. Bergelson representing Carz at that time? If you know.

A. I don't know.

Q. Was there anything more to your discussion with Mr. Bergelson, prior to March 15, 1972?

A. No, that's what it consisted of, and I had a number of discussion with him.

Q. Did you meet with Mr. Bergelson?

A. Yes.

Q. How many meetings did you have?

A. Maybe 5.

Q. And did each of these meetings take place in your office in Detro

A. No, I think I met with him in Philadelphia, but I'm not certain.

Q. Where was your office located at that time?

A. In the GM Building.

Q. In New York?

A. No, in Detroit.

Q. In Detroit. And was that the only meeting which took place in Philadelphia?

A. I may have been there twice.

Q. And where did the other meetings take place?

A. In Detroit.

Q. Can you recall the first meeting with Mr. Bergelson?

A. No.

Q. Do you know where the first meeting took place?

A. I think Detroit, but I'm not certain.

Q. Did Mr. Bergelson initiate the meeting?

MR. KLEINBARD: Does this matter whether who initiated the meeting? There apparently are discussions on a credit problem involving a customer. Now, is there anything more to it than that as far as we're concerned?

A. Not as far as I'm concerned.

Q. Did any discussions about this law suit come up in any of your conversations with Mr. Bergelson?

A. I believe he mentioned it, but no discussions.

Q. Did you communicate with anyone in General Motors about this law suit as a result of or after your communications with Mr. Bergelson?

MR. KAPLAN: Excluding counsel.

Q. Excluding counsel.

A. No, I have no recollection of that.

Q. At any time did Mr. Bergelson indicate to you that he was part of Nabcor, or representing Nabcor?

A. I believe he told me he was president.

Q. Do you know of any agreements which were entered into between Nabcor and General Motors or GMAC?

A. Well, the financial agreement, yes.

Q. Did you have the occasion to see the agreement between Nabcor and either GM or GMAC?

A. No.

Q. Do you know if Celina Mutual Insurance Company was a party to the agreement?

MR. KAPLAN: Objection. What's the relevance, Mr. Person? If you would, explain how that bears on whether GM was involved in refusals to deal with Nabcor.

MR. PERSON: The relevance is the question of knowledge on the part of GM or GMAC relating to any judgments against Nabcor.

MR. KAPLAN: Direct the witness not to answer.

MR. KLEINBARD: It's a dead issue now, isn't it?

Q. Did you make any recommendations regarding any proposals by Mr. Bergelson?

A. Yes, I recommended that we give them an extension.

Q. And who did you recommend that to?

A. GMAC.

Q. Do you know who at GMAC you recommended that to?

A. No, I really don't. It would have been Dooley, Pringle or Bradley.

Q. Did Mr. Bergelson indicate to you that he would be inclined to terminate the action against General Motors and GMAC?

MR. KLEINBARD: I'll object to that.

MR. KAPLAN: Don't answer, Mr. Berg.

Q. Did you discuss the possibility of termination of the action with any persons at GM or GMAC other than counsel?

MR. KLEINBARD: Same objection.

Q. Did you have any discussion about the issuance of a fleet certificate to Nabcor with Mr. Bergelson?

A. Not that I can recall.

Q. Did you discuss the issuance of a fleet certificate to Carz, Inc. with Mr. Bergelson?

A. Repeat that, would you please?

Q. Did you discuss with Mr. Bergelson the possibility of issuing a fleet certificate to Carz, Inc.

A. I can't tell you for sure, but I'm confident they had a certificate.

Q. Do you know when the certificate was obtained by them?

A. No. Sometime in the middle or, probably, the middle 60's.

Q. Do you recall discussing Nabcor with Mr. S. E. Johnson?

A. I don't believe I talked to him.

Q. Who is Mr. Johnson?

A. He's Vice President of GMAC, New York.

Q. Or with Mr. Pringle?

A. Regional Manager in Detroit.

Q. Of what?

A. Of GMAC.

Q. Did you talk about Nabcor with Mr. Pringle?

A. I'm sure there were some discussions, but I have no specific recollection of them.

Q. With Mr. Kerr (pronounced Car), K-E-R-R?

A. Kerr (pronounced Ker)?

Q. Kerr.

A. All the people that are listed there were involved in some way.

MR. KLEINBARD: By there, you're referring to the bottom o the letter of March 17, 1972?

A. Right, GM document 280.

Q. Do you recall any discussions with any of them relating to Nabcor, that is the specifics of any discussions? Other than counsel.

A. Well, it was discussed, but I have no specific recollection, other than the one I had with Bergelson.

Q. Do you recall if you stated to any of these persons that Nabcor was not qualified to obtain a fleet certificate?

A. I don't think I would have.

Q. What was the reason for your involvement in this transaction with Mr. Bergelson?

A. I thought I told you that he came to me. The fellow by the name of Bob Kramer who owned Carz, Inc. and who was in financial difficulty. Now whether Bergelson initiated the meeting or whether Kramer did, I can't recall. I would think that probably Kramer did.

Q. Was this in the ordinary course of your business to be involved in matter such as this?

A. Oh, yes, very much so.

Q. Did your involvement relate to the credit of either Carz or any other party to the transaction?

A. Yes.

Q. Was there any other connection? Was the fleet certificate an issue in this matter?

A. I don't think it was even mentioned.

Q. Was there anything other than credit which you were concerned with?

A. I was concerned with our relations with the department stores. If they'd been terminated. I was concerned with losing a large customer that I had almost 100% of the fleet. And I was concerned with our financial exposure.

Q. Were those your primary concerns in this matter?

A. Yes.

Q. Was the credit of Nabcor a factor?

(Off the Record to Change Tapes; Back on the Record.)

Q. Were you concerned about the credit of Nabcor with respect to the transaction that was contemplated?

A. Well, I really don't make the credit evaluation. That's done by GMAC. But obviously we were concerned.

Q. Was Nabcor to be a party to the agreement?

MR. KAPLAN: What agreement are you talking about?

MR. PERSON: The transactions that were being discussed by Mr. Berg with Mr. Bergelson.

MR. KAPLAN: And Mr. Kramer.

MR. PERSON: And Mr. Kramer.

MR. KAPLAN: Yes.

A. I don't believe I have any knowledge of that. They would have concluded the transaction, submitted their financial statements to GMAC, who in turn would have come to us.

BY MR. KLEINBARD:

Q. By "they would have concluded their transactions", who are you referring to?

A. I'm talking about Bergelson and the other parties.

Q. Alright.

BY MR. PERSON:

Q. Did this occur?

A. I really can't answer that. We repossessed our cars finally, and I haven't heard from him since.

Q. Do you know when the repossession occurred?

A. No, but a short time after they went in, probably 90 days.

BY MR. KLEINBARD:

Q. Who was they, excuse me.

A. Well, a new group. I'm not familiar with everybody that was involve in it.

Q. Well, just so that I have some identification of who you're talkin about, right.

A. The group that took over Carz, Incorporated.

Q. OK. And you say shortly after a new group took over Carz, Incorporated you repossessed the cars?

A. Right.

Q. OK.

BY MR. PERSON:

Q. Have you discussed Nabcor or Frank Maiorana with any persons, other than counsel, who at the time were not employed by General Motors other than what you've testified to here today?

A. I don't believe so.

Q. Have you communicated with any GM dealers at any time about Nabcor or Frank Maiorana?

A. No, I don't believe so.

Q. Have you communicated with any General Motors Zone of any Division about Nabcor or Frank Maiorana at any time other than what you've testified to

A 1724

GENERAL MOTORS ACCEPTANCE CORPORATION

INTER-ORGANIZATION LETTERS ONLY

TO Mr. R. E. Bradley, Assistant Manager ADDRESS Dayton Branch

FROM D. L. Dooley ADDRESS Executive Office

SUBJECT Charge-A-Car Systems, Inc. DATE March 14, 1972

Attached for your information is a newspaper clipping forwarded to us by the Philadelphia branch.

DLDooley

D. L. Dooley
Lease, Fleet & Special Financing

DLD:at
Att.

cc: Mailed to Mr. John C. Thede, General Motors General Counsel 3/17/72

Exhibit M

: Mr. Dennis Dooley

om: F. J. Connolly

6 Executives Charged With Theft of Records

Six executives of a Jenkintown-based firm that sells new cars at discounts were held for a Montgomery County grand jury yesterday on charges they stole the firm's records.

The six officials of National Auto Brokers Corp. (NABCOR) of Benson Manor, Jenkintown, were charged with robbery, larceny, burglary, receiving stolen goods and conspiracy.

The six defendants are Wilbur Bellinger, 52, of Lombard st. near 6th, Philadelphia; Victor Bergelson, 33, of the 7700 block of Sycamore ave., Elkins Park; Alvin Fried, 51, of the 200 block of Richards lane, Hewlett Harbor, N. J.; Herman Rappaport, 41, of Pittsburgh; and Jerry S. Rubin, 29, of Patricia ave., Delran, N. J.

All were freed in $3,500 bail.

The defendants argued they were elected directors of NABCOR the night before and were entitled to the records. The management of the firm is being litigated in a civil suit pending before Montgomery County Court.

A 1723

Petr's Exh
Ex-6
10/8/74
CAK

File — Dayton Branch

R. E. Bradley — Dayton Branch

Carz, Inc. — March 15 & 16, 1972

March 15, 1972: Received call from V. Jertson, Detroit TEP, advising that manufacturer (Chev.) had rejected proposed 90 day extension and would so advise by memo. Carz was to pay February 25 and succeeding instalments but manufacturer agreeable to some flexibility on Carz paying off units removed from service. Discussed several aspects of case including possibility of repercussions from department stores in case repossession necessary. Vern advised that all aware of relationships and branch should proceed to secure funds from Carz.

March 15, 1972: Called D. Dooley, Special Financing, Executive Office, advised him of manufacturer's decision, reviewed possibility of department store reaction, and told him branch would proceed tomorrow to follow Carz for money. Dennis agreed that this course of action was only one open.

March 16, 1972: Prior to contacting Carz, Messrs. Pringle and Dykstra decided to reconfirm the manufacturer's position so that branch would be firm in taking a "no revision" policy with Carz.

March 16, 1972: Messrs. Pringle, Dykstra and the writer called V. Jertson at Detroit TEP. He reconfirmed the contents of yesterday's conversation. Mr. Pringle asked if TEP had any objection to our contacting Mr. R. L. Berg, Chevrolet Fleet Sales, directly and Mr. Jertson concurred that this action was appropriate.

March 16, 1972: Mr. Pringle called Mr. Berg who advised that the "no revision" decision may have been a bad one. Mr. Berg requested and was provided with amounts paid by Carz, Inc. since takeover (approximately $156M in principal, including units paid in full, and about $30M interest).

March 16, 1972: Mr. Berg called Mr. Dykstra to advise that Chevrolet had reconsidered and would approve a 60 day extension of monthly principal payments, providing February, 1972 interest paid promptly and March and April, 1972 interest paid when due. Additionally, Carz would pay for sold units promptly and collection of excise tax refunds would be delayed for present but collection should be effected as soon as possible. Chevrolet's approval of Form 5044 will be sufficient.

March 16, 1972: Writer called Fergelson and advised per above. He agreeable and mailing February, 1972 interest today. Auditing firm of Touche-Ross working on Carz, Inc. statement and same should be forwarded in next two weeks. MARCOR statement will be closed as Mariano was fired by Fergelson interests

Exhibit N

and has sued them in civil action. Bergelson interests control 350,000 shares of NABCOR and have three directors on board. Mariano group controls 250,000 shares and three directors. The remaining 225,000 shares are owned in various "street names" by the investment banking firm which will handle proposed underwriting. This firm has one ("neutral") member on board. A board meeting was called earlier this month and all interests were notified. Mariano group didn't attend but other four directors were present. Board (4) fired Mariano as President, authorized moving offices to Jenkintown, and after consulting legal counsel, removed most of NABCOR records to new office. Mariano filed criminal action against the four men and then had them arrested. Both civil and criminal actions pending with hearings scheduled next week. Mariano retains some NABCOR records and as soon as these are secured, audit of NABCOR will be completed and statement forwarded.

Vic further advised that the Atlanta franchise had been sold to a local party who reportedly has a Net Worth of $100M. The buyer gave Carz, Inc. $5M cash, a post dated check for May 1, 1972 of $15M, and a note for $75M calling for 72 monthly instalments, beginning June 1, 1972. The buyer will use Carz, Inc.'s fleet until replacement is made or a year elapses. When units replaced or after 12 months, buyer must make his own financing arrangements. Excise tax refunds will be paid as soon as possible but no later than June 30, 1972 - this agreed informally.

Assistant Branch Manager

RSB:nn

cc: Mr. S. E. Johnson, Vice President
Mr. A. K. Pringle, Regional Manager
Mr. G. F. Kerr, Director Special Financing
Mr. R. L. Berg, Chevrolet Fleet Sales
Mr. C. McCrary, Manager, Chevrolet Sales Finance
Mr. G. P. Davey, Jr., Detroit TSF /
Mr. J. C. Thede, GMC Legal Staff ✓

[illegible] A 1725

GENERAL MOTORS ACCEPTANCE CORPORATION
330 SOUTH LUDLOW STREET
DAYTON, OHIO

March 17, 1972

Mr. Victor Bergelson
c/o CARZ, Inc.
Benjamin Fox Pavillion
Suite 309
Jenkintown, Pennsylvania

Dear Vic:

This will confirm our telephone conversation of yesterday regarding a sixty day moratorium on the monthly principal payments due GMAC. The monthly instalment due on February 25, 1972 is thereby advanced so that it will mature on April 25, 1972 and all succeeding instalments will likewise mature sixty days later than presently scheduled.

This revision in the terms of our agreement is approved subject to your payment of the February, 1972 interest promptly, and payment of future monthly interest billings upon presentation to your firm. Additionally, the balance due GMAC on any cars removed from rental service and sold by your firm, must be paid promptly.

It is also understood that the audited financial statements of CARZ, Inc. will be forwarded to us in the near future and those of HAECOR will be prepared and forwarded as soon as the complete records are available. In my letter dated February 23, 1972, I requested that you sign and return the UCC-1 form which was enclosed. As we have not received this to date, I again submit this request.

Thank you for your cooperation and consideration in these matters.

Very truly yours,

R. E. Bradley
Assistant Branch Manager

REB:mm

cc: Messrs. S. E. Johnson, Vice President
A. K. Pringle, Regional Manager
G. F. Kerr, Director Special Financing
R. L. Berg, Chevrolet Fleet Sales
C. McCrary, Manager, Chevrolet Sales Finance
G. P. Davey, Jr., Detroit [illegible] ✓
J. C. Theda, GMC Legal Staff ✓

Exhibit O

Dun & Bradstreet REPORT

D-U-N-S ©DUN & BRADSTREET, INC. RATING A 172

SIC
50 12

01-424-9528
NATIONAL AUTO BROKERS CORP
(Fmly: Nabcor Inc)

A SN 4 MAR 10 1972 (F 3-24)
DISTRIBUTOR

BENSON MANOR APTS
JENKINTOWN PA 19046
MONTGOMERY COUNTY
TEL 215 885-2075

RECORD ITEMS

A check of Montgomery County records reveals the following:

Feb 16 1972 a Suit in equity was entered against Frank Mariorane by National Auto Brokers Corp. The following information was extracted from the records: "It is hereby ordered and decreed that the defendant preliminarily be enjoined from in any interfering with the transfer of 350,000 shares of National to the former shareholders of Consumer and from communicating, orally or in writing, directly or indirectly, with National's transfer agent. Custody of said shares shall be in the Prothonotary of Montgomery County, Pa. until further order of the Court." The late entry on the record is that the hearing has been continued until Mar 14 1972.

Subsequently on Feb 23 1972 a Suit in equity was entered by National Auto Brokers Corporation and Frank Mariorana against Victor Bergelson, Herman J. Rappaport, Isadore S. Dion and Melvin Dion. The following information was extracted from public records: "And now, to wit, this 23rd day of Feb 1972 upon consideration of the within petition, a rule is granted upon defendants to show cause why a final order enjoining their activities as well as directing them to turn over the various items mentioned in the petition should not be issued." The last entry on the records is that the hearing will be held on Mar 14 1972.
3-10-72 (396 58) (AI) D

3

Exhibit P

April 7, 1972

Mr. Robert Bradley
General Motors Acceptance Corporation
330 South Ludlow Street
Dayton, Ohio 45402

Dear Bob:

As per our telephone conversation, enclosed find a financial statement that reflects Carz, Inc. and Nabcor. We are now beginning to prepare new internal statements reflecting Carz, Inc. by itself. Hopefully I will have these out to you within the next 30 to 45 days.

Sincerely,

Victor Bergelson
Chairman of the Board

VB/pw

Enclosure

CARZ

Exhibit Q

GENERAL MOTORS ACCEPTANCE CORPORATION

A 1728

TO Mr. G. P. Davey, Jr., Manager ADDRESS Detroit [illegible]

FROM R. E. Bradley ADDRESS Dayton Branch

SUBJECT Carz, Inc. DATE May 17, 1972

Attention: Mr. E. J. Smith

Confirming our recent telephone conversation, enclosed please find an unaudited March 31, 1972 financial statement on this fleet customer. This data reportedly depicts the condition of the company, exclusive of the NABCOR interests which were previously consolidated. The original investors in Consumers Auto Leasing (Bergelson, Rappaport, Dion, et al) found it necessary to buy back their company from the NABCOR group (Mariano) as the combined management team was torn with dissention. This repurchase required $70M in cash from a combination of CARZ and the Bergelson group.

Mariano is no longer connected with the CARZ organization but NABCOR remains as a guarantor of the lease outstandings as the guaranty was executed while the companies were consolidated. Ultimate collection under this guaranty, if necessary, would be doubtful as NABCOR's only asset is reportedly the $70M.

The repurchase and the clearance of many local vendor's claims against Charge-A-Car have severely restricted CARZ's cash position. Trade accounts receivable represent funds due from the various department stores and other receivables include amounts due from franchisees on the purchase of franchises, as does the $60M in long term receivables.

The $84M of goodwill should be withdrawn from indicated net worth. The $150M in long term debt is due Celina Mutual Insurance Company. This obligation is payable in three annual instalments and the $50M portion is correctly shown as current since it matures on November 1, 1972. The $50M bank note is a short term working capital borrowing from the Philadelphia National Bank, which two of the principals have personally guaranteed. The indicated net worth of $196M must be reduced to $112M with the elimination of goodwill.

Net profit of $146M is indicated for the first quarter of 1972, however, it is noted that $151M of this profit represents franchise sales. The company continues to sustain a loss on operations but the level has been reduced.

In his letter of March 2, 1972, Mr. Bergelson outlined a schedule for

Exhibit R

fleet reduction which they have been unable to attain. A great deal of time was devoted to the dissolution with HABCOR as the matter involved the courts because Mariano had members of the Bergelson group arrested for stealing the company records. Clearance of these items plus the discovery by CARZ people that Charge-A-Car was more severely in trouble than they originally thought, have caused delays. Unknown and unpaid obligations of Charge-A-Car continued to arise for most of the first quarter and each was resolved and paid.

Messrs. Bergelson and Dion recently visited the branch and they remain optimistic about the future. The branch considers this account in the process of liquidation as additional financing is not contemplated at this time and the principals have been so advised. However, in proceeding with this liquidation, it has been, is now, and probably will continue to be necessary to extend balloon payment maturities on some contracts. The branch continues to bill the company for the balance on these maturities but feel that such extensions are reasonable, providing the normal monthly principal reductions are paid, in lieu of the balloon amount. This procedure appears preferable, at this time, to forcing sale of the units involved.

As of May 1, 1972, a total of 413 units were being financed for this company. The branch is conducting regular collateral audits of 100% of outstandings to maintain control as much as possible. CARZ has advised us this week that the payoff of approximately 15 units is in process as the cars have been sold.

R E Bradley

Assistant Branch Manager

REB:nn
Encl.
cc: Messrs. S. E. Johnson, Vice President
A. K. Pringle, Regional Manager
G. F. Kerr, Director Special Financing
J. C. Thede, GMC Legal Staff

(Retyped) A 1730

CARZ, INC.

FINANCIAL STATEMENT

FEBRUARY 29, 1972

A 1730.

CARZ, INC. (Note 1)

BALANCE SHEET

February 29, 1972

ASSETS

CURRENT ASSETS

Cash	$ 37,642
Trade accounts receivable, less allowance for doubtful accounts of $[illegible]	305,641
Other accounts [illegible]	23,500
Prepaid [illegible]	17,536
Total current assets	$ [illegible]
[illegible] equipment - at cost, less allowance for depreciation of $49,562 (Note 2)	$1,110,330
Excess of cost over market value of tangible assets acquired	65,622
Furniture and fixtures - at cost, less allowance for depreciation of $450	14,799
Other Assets	
[illegible]	35,[illegible]
Deferred expenses	13,000
	$1,6[illegible],064

CARZ, INC.

FINANCIAL STATEMENT

FEBRUARY 29, 1972

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CARZ, INC. (Note 1)

BALANCE SHEET

February 29, 1972

ASSETS

CURRENT ASSETS

Cash	$ 37,642
Trade accounts receivable, less allowance for doubtful accounts of $16,828	305,641
Other accounts receivable	23,500
Prepaid Expenses	17,530
TOTAL CURRENT ASSETS	$ 384,313
RENTAL VEHICLES - at cost, less allowance for depreciation of $49,561 (Note 2)	$1107,330
Excess of cost over market value of tangible assets acquired	65,622
Furniture and fixtures - at cost, less allowance for depreciation of $450	14,799
Other Assets	
Deposits with insurance company	35,000
Deferred expenses	15,000
	$1,622,064

February 29, 1972

LIABILITIES AND STOCKHOLDER'S EQUITY

CURRENT LIABILITIES

Note Payable to bank	$ 50,000
Accounts payable	24,348
Accrued payroll taxes and amounts withheld	3,621
Accrued expenses and other liabilities	25,814
TOTAL CURRENT LIABILITIES before rental vehicle obligations	$ 103,783
RENTAL VEHICLE OBLIGATIONS (note 2)	$1,156,105
Deferred Federal Income Taxes	39,890
Stockholder's Equity	
Common Stock	$ 275,000
Retained earnings	47,286
	322,286
	$1,622,064

See notes to financial statements

CARZ, INC

STATEMENT OF INCOME

For the two months ended
February 29, 1972

OPERATING REVENUES	
Rental income	$148,509
Sales to licensees	125,000
TOTAL REVENUES	$273,509
COSTS AND EXPENSES	
Cost of locations sold to licensees	$ 28,600
Selling, general and administrative	99,298
Depreciation of rental vehicles	50,838
Interest	7,597
Income before federal income tax	$ 87,176
Federal taxes on income-deferred (Note 3)	$ 39,890
NET INCOME	$ 47,286

See notes to Financial Statements

CARZ, INC.

NOTES TO FINANCIAL STATEMENTS.

1. Carz, Inc. was incorporated in the State of Delaware in December, 1971 as a wholly owned subsidiary of National Auto Brokers, Inc. (NABCOR). The company's outstanding shares were issued to NABCOR in consideration of NABCOR's purchase of the assets of Charge-A-Car Systems, Inc. for $275,000, which assets were transferred to Carz, Inc., together with the obligations of Charge-A-Car Systems, Inc. to General Motors Acceptance Corporation.

2. The Company's rental vehicles are pledged under security agreements with General Motors Acceptance Corporation (GMAC). The underlying agreements generally provide for the thirteen monthly payments with a final lump sum payment in the fourteenth month. The company's general policy is to sell such vehicles before the final payment becomes due.

3. No current income taxes are payable due to using accelerated depreciation on rental vehicles for federal income tax purposes and straight-line method for book purposes and to the use of the installment method on certain sales to licensees.

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JAN 20 1975

U.S. DISTRICT COURT
FILED
JAN 21 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- -x

70 Civ. 5421A (TPG)

INTERROGATORIES
WITH REQUEST TO
PRODUCE DOCUMENTS

TO: Attorneys for Defendants
GENERAL MOTORS CORPORATION ("GM")
GENERAL MOTORS ACCEPTANCE CORPORATION ("GMAC")
FORD MOTOR COMPANY ("Ford")
CHRYSLER CORPORATION ("Chrysler")
AMERICAN MOTORS CORPORATION ("AMC")

BOB BAIN CHEVROLET
PAUL BATT BUICK, INC.
GLEN CAMPBELL CHEVROLET, INC.
GOTHAM FORD, INC.
GRAND FORD, INC.
HAMISTER-GILLOGLY CHEVROLET, INC.
LUBY CHEVROLET CO., INC.
AL MAROONE FORD, INC.
MIDTOWN CHEVROLET, INC.
PARAGON OLDSMOBILE, INC.
ROBIN FORD SALES, INC.
(hereinafter collectively referred to as the "Dealer Defendants").

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and the order by Hon. Thomas P. Griesa at a hearing on January 20, 1975, the defendants identified above are hereby required to serve upon the undersigned, within 30 days from the date of service hereof, sworn answers to each of the interrogatories designated for answer by the defendant, as hereinafter set forth.

These interrogatories are continuing interrogatories. If at any time after service of your answers hereto, and prior to the trial of this action, you obtain additional information responsive to any of these interrogatories, you shall, within 30 days, and in no event later than 5 days before trial,

(619)

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serve supplemental sworn answers setting forth such additional information.

TIME PERIOD

These interrogatories are to be answered for the period commencing January 1, 1966 and ending April 30, 1973, unless stated to the contrary in a specific interrogatory.

INTERROGATORIES

TO BE ANSWERED BY GM, GMAC. 1. Identify each employee, sales employee or official of the GM Chevrolet Zone for New York City and/or Long Island (the New York Chevrolet Zone") who from September 1, 1974 to the present was terminated from his employment with the New York Chevrolet Zone for any reason including dismissal, resignation, transfer, promotion or retirement.

TO BE ANSWERED BY GM, GMAC. 2. As to each person identified in answer to Interrogatory 1 above,

(a) state the date of the termination;

(b) state the beginning and ending dates of the person's employment with (i) the New York Chevrolet Zone; and (ii) GM, GMAC or any divisions or subsidiaries;

(c) identify each position held by the person with the New York Chevrolet Zone, GM, GMAC, any divisions or subsidiaries, from January 1, 1966 to the present and the beginning and ending dates for each such position;

(d) describe each of the reasons for the termination of employment.

TO BE ANSWERED BY GM, GMAC. 3. Identify each of the other zones, districts or regions in which employees, sales employees or officials of GM or GMAC were terminated from their employment for any reason including dismissal, resignation, transfer, promotion or retirement, from September 1, 1974 to the present, and state the number of such terminations for each of the zones, districts and regions.

TO BE ANSWERED BY GM, GMAC. 4. As to each present or former GM or GMAC employee named or described in STATEMENT BY PLAINTIFFS IDENTIFYING OFFICIALS AND EMPLOYEES OF DEFENDANTS TO BE DEPOSED BY PLAINTIFFS, dated July 25, 1974 or in plaintiffs' WITNESS LIST (Boycott claims), dated October 8, 1974, identify each person not employed as of January 20, 1975 by GM, GMAC or any division or subsidiary thereof and as to each such person so identified, answer subdivisions (a) through (d) of Interrogatory 2 above.

TO BE ANSWERED BY GM, GMAC. 5. Identify each of the 60 franchised dealers in the New York Chevrolet Zone which, according to the January 12, 1975 article in the Sunday New York Times (a copy of which is annexed hereto as Exhibit A) may have submitted false warranty claims, or may have given gifts to officials or employees of the New York Chevrolet Zone. (The article is entitled "Chevrolet, Citing Policy Violations", Ousts Most Zone Aids Here".)

TO BE ANSWERED BY GM, GMAC. 6. Identify each official or employee of GM or GMAC responsible for each termination of the persons identified in answer to Interrogatories 1, 3 and 4 above.

TO BE ANSWERED BY GM, GMAC. 7. Identify each of the persons identified in answer to Interrogatories 1, 3 or 4 above who at any time were asked questions about Nabcor by employees, officers, agents or attorneys of GM or GMAC, from December, 1970 to the present.

TO BE ANSWERED BY GM, GMAC. 8. Identify each GM or GMAC officer or employee primarily responsible at any time from January 1, 1966 to the present (unless stated otherwise) for:

(a) determination of the extent of coverage to be provided in the new-car warranties of GM or the terms or conditions of the warranty;

(b) determination of GM policy, rules and procedures for evaluation of dealers' performance under their sales agreements with GM;

(c) policy, rules or procedures for maintenance of compensating balances by GM or GMAC with any commercial banks;

(d) maintenance of compensating balances by GM or GMAC with First National City Bank ("Citibank") at any time during 1966-7 and at the present; and

(e) policy on the establishment of destination charges from 1955 to the present.

TO BE ANSWERED BY FORD. 9. Identify each Ford or Ford Motor Credit Company ("FMCC") officer or employee primarily responsible at any time from January 1, 1966 to the present (unless stated otherwise) for:

(a) determination of the extent of coverage to be provided in the new-car warranties of Ford or the terms or conditions of the warranty;

(b) determination of Ford policy, rules and procedures for evaluation of dealers' performance under their sales agreements with Ford;

(c) policy, rules or procedures for maintenance of compensating balances by Ford or FMCC with any commercial banks;

(d) maintenance of compensating balances by Ford or FMCC with Citibank at any time during 1966-7 and at the present; and

(e) policy on the establishment of destination charges from 1955 to the present.

TO BE ANSWERED BY CHRYSLER AND AMC. 10. Identify each Chrysler or AMC officer or employee primarily responsible at any time from January 1, 1966 to the present (unless stated otherwise) for:

(a) determination of the extent of coverage to be provided in the new-car warranties of Chrysler or AMC or the terms or conditions of the warranty; and

(b) policy on the establishment of destination charges from 1955 to the present.

TO BE ANSWERED BY GM, FORD, CHRYSLER AND AMC. 11. Identify each of your franchised dealers or retail divisions located in the city or town in which Nabcor, any of the 6 Nabcor franchisee plaintiffs or any of the other Nabcor franchisees had their principal place of business which purchased cars from you under any fleet plan for leasing companies during 1966 to April 30, 1973.

TO BE ANSWERED BY GM, FORD, CHRYSLER AND AMC. 12. As to each franchised dealer and retail division identified in answer to the preceding interrogatory, identify each car purchased from you under a fleet program for leasing companies at any time from 1966 to April 30, 1973, including

(a) date of order from factory;

(b) make, model and year of car;

(c) serial number of car;

(d) identity of the fleet customer; and

(e) date of delivery of car to the dealer or retail division.

TO BE ANSWERED BY EACH OF THE DEALER DEFENDANTS: 13. Identify each car purchased by you from GM or Ford under a fleet program for leasing companies at any time from 1966 to April 30, 1973, including answers to subparagraphs (a) through (e) under the preceding interrogatory.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendants GM, GMAC, Ford, Chrysler and AMC (as designated below) are hereby required to produce for inspection and copying at the offices of the undersigned on or before February 20, 1975 at 10:00 a.m. each document the production of which is requested herein.

DOCUMENTS TO BE PRODUCED

TO BE PRODUCED BY GM AND GMAC:

1. All documents evidencing or relating to interviews by you or your attorneys or agents of any of the persons identified in answer to Interrogatory 1 above.

2. All documents evidencing or relating to the termination of each of the persons identified in answer to Interrogatories 1, 3 and 4 above.

3. All reports, studies or analyses of the submission of fictitious or fraudulent warranty claims by GM franchisees.

4. All documents relating to unemployment insurance claims from September 1, 1974 to the present by each of the persons described in answer to Interrogatories 1, 3 and 4 above, and any statements by GM relating thereto.

TO BE PRODUCED BY GM, GMAC AND FORD:

5. All policy documents relating to maintenance of compensating balances with commercial banks during 1966-7 or the present.

6. All documents relating to maintenance of compensating balances by GM, GMAC, Ford, FMCC with Citibank during 1966-7 or at the present.

7. All policy documents relating to evaluation of performance by GM or Ford dealers under their sales agreements with GM and Ford and any agreements with GMAC and FMCC.

TO BE PRODUCED BY GM, GMAC, FORD, CHRYSLER AND AMC:

8. Copy of all warranties for each make of automobile for the model years 1966 through 1975.

9. All policy documents relating to warranty coverage, terms or conditions as to model years 1966 through 1975.

10. All policy documents relating to destination charges as to model years 1955, 1956 and 1966-1975.

11. All R. L. Polk reports on new-automobile registrations in the United States from 1966-1975 model years.

Dated: New York, New York
January 20, 1975

Carl E. P

Carl E. Person

Attorney for Plaintiffs
Office & P.O. Address:
132 Nassau Street
New York, N.Y. 10038

Tel. (212) 349-4616

HE NEW YORK TIMES, SUNDAY, JANUARY 12,

Chevrolet, Citing 'Policy Violations,' Ousts Most Zone Aid

By M. A. FARBER

The Chevrolet Division of General Motors has quietly dismissed nearly all of the 30 to 40 employes of its zone office for New York City and Long Island for alleged wide-ranging "violations of company policy."

General Motors officials, who asked not to be identified, said the employes had been discharged for allegedly accepting gifts from dealers, perhaps in exchange for favors, or for allegedly falsifying warranty claims submitted to the company's home office in Detroit for payment, perhaps in collusion with dealers.

Other than acknowledging the dismissals on the ground that the employes had violated General Motors policy, a spokesman for Chevrolet in Detroit declined to comment.

"This is Chevrolet's business and we feel it does not need a public airing," the spokesman said.

Denial by Employes

A number of the employes who were dismissed last month admitted in interviews that they had accepted small gift certificates, Thanksgiving turkeys, liquor and other items from dealers but they denied falsifying or inflating warranty claims to either their advantage or the benefit of dealers.

Some of these former employes said that Chevrolet dealers here often falsify warranty claims either to obtain money, to get credit toward automotive parts from the home office, which is more usual, or to please customers.

For example, it was said, a dealer might provide $70 worth of service on a car under warranty but submit a bill to the home office for $270. Or, to keep a customer happy, a dealer might perform service without charging the customer and state that the car was under warranty when, in fact, the warranty had expired. In either case, the home office would pay the cost of service.

The bill to the home office would be approved by representatives of the Chevrolet zone office, located in Bethpage, L.I., according to the former employes who were interviewed. But they said that unless the zone office employes were receiving kickbacks from dealers, there was virtually no way in which the employes could benefit financially from the falsifying of warranty claims.

"Part of our job was to detect false claims by dealers," said one employe who was dismissed, "but it isn't easy and some got through."

Display of 'Friendship'

The former employes, who also asked not to be named, said there was no relation between false warranty claims by dealers and the "small" gifts given by dealers to employes on holidays or other occasions.

The gifts, they said, were merely meant as a display of "friendship."

"I don't know, maybe the dealers thought they were keeping us happy," said another man who was dismissed. "But I can tell you this. All over this country, dealers give little gifts to representatives of auto companies."

Several Chevrolet dealers here said they were unaware of dealers submitting false warranty claims. And they expressed shock at the dismissals, which both the dealers and General Motors officials said were extraordinary in scope.

The dealers said the charges of false warranty claims, if true, must be "only the tip of the iceberg" because sales employes in the zone office, who have nothing to do with warranty claims, were also dismissed.

Some of the dealers said they had heard "rumors" recently that zone office representatives were favoring certain dealers in the distribution of new Chevrolets, especially models that sell particularly well.

'Help Here and There'

But one zone sales employe who was dismissed after more than 20 years with General Motors said it would have been impossible to favor certain dealers "over a prolonged period because the books are open and Chevrolet does regular audits."

"Aside from help here and there with a new car that was suddenly needed, there wasn't much we could do for or against a dealer in the sales area," he said.

There was no indication yesterday that General Motors intended to seek any criminal action against the employes who were dismissed. According to several former employes, company representatives said that General Motors would state why the employes had been dismissed if they applied for unemployment insurance, but not if the employes sought new jobs elsewhere.

It was also unknown whether General Motors planned to take action against any of the zone's 60 dealers who may have submitted false warranty claims or gave gifts to zone-office employes here.

Several of the employes who were dismissed said it was "very difficult" for any automobile manufacturer to withdraw a dealer's franchise.

"The dealer has to go bankrupt or be convicted of criminal charges or something on that order," an experienced former employe said.

One man who was dismissed said it was "common practice" for dealers to do "get-ready" work on new cars used by zone-office employes and not charge the employes. Instead, he said, the dealers would give the employes a receipted bill, as if they had paid, and the employes would turn the bill in on their expense accounts to the home office and be reimbursed. The amount involved, he said, was about $40 every several months.

"The dealers wouldn't accept the money even if you tried to pay them $40," he said. "They might even put it in your coat pocket or briefcase if you gave it to them."

General Motors officials said that 28 employes of the zone office here had been dismissed, apparently during the week before Christmas. But that figure may not include several former employes of the office, at least one of whom was a regional Chevrolet official, who were also dismissed.

A number of the former employes said they had been questioned in early December by General Motors lawyers and auditors from Detroit who occupied rooms at the Holiday Inn in Plainview, L.I. "They told us they were only after upper management," one former employe recalled. "They said the big guys were hypocrites and we should tell all we know. After that we were all fired."

Some of the former employes are extremely bitter over their dismissals — one noted that he was now forced to drop plans to adopt a Korean child and another was dismissed within days after he was transferred to Detroit. But others have adopted a more philosophic view.

"What happened," said one man who worked for General Motors for more than 20 years and now has no pension to look forward to, "is that conditions that were totally accepted for better than two decades of my experience suddenly became totally not accepted. What puzzles me, though, is why did they single out New York?"

REMEMBER THE NEEDIEST!

with their rights under the Ku Klux Klan Act. This motion was served on us on January 10 about ten days after we advised Mr. Person that were going to take these depositions that I have shown you in my letter of January 31, and it is the second time, your Honor, in the history of this case that the plaintiffs have served such a motion for a preliminary injunction at or about the time that we were trying to take depositions.

There is an almost exact parallel of this in the history back in 1973.

MR. PERSON: Your Honor, they are trying --

MR.KLEINBARD: Please let me finish, Mr. Person. I don't interrupt you.

Following our conference with you on February 14th, 1973, Mr. Person, we advised him that we would commence Mr. Maiorana's deposition on March 19th and the first preliminary injunction motion made in thiscase was served on March 5th.

So that we have here a repetition of a practice.

Now, the basis of this application, namely, that my firm and GM defendants have conspired to and are preventing the plaintiff from settling this case, other than GM and Ford, even phenomenal sums that apparently upsets Mr. Person, and therefore, he asserts that he is being compelled to continue to litigate with defendants who are not the real parties in interest.

And his persistent allegation to this effect, for about 40 paragraphs of his moving affidavit, confirm in fact that these defendants never should have been named in the first place.

He can't understand why a defendant doesn't want to be shaken down for even a nominal amount. And his basic premise is admittedly false with respect to five GM dealers who have settled with him for $2,000 apiece.

And I say that his entire argument rests on either misrepresentation or unsupported inferences, he says that the non-GM defendants, all of whom, many of whom, are over to my right in the jury box, don't do very much, and I think that this Court is personally aware of the struggles that he has had with the newspaper defendants who are represented here today, the First National City Bank, the Better Business Bureaus, and so forth, and this argument constitutes in my judgment an affront to them as well as to me.

He complains when we attend the depositions of non-GM witnesses and we attempt to check the plaintiffs' transcripts with the tapes. Well, I plead guilty to that, your Honor.

He argues without any factual support whatever that we have agreed to indemnify all the non-GM defendants in whole or in part than we are paying for their defense. Now, he totally misrepresents a letters that I sent to the various defendants dated November 11th, which I have sent to defense counsel, and I hand a copy to your Honor. And if you will compare that with paragraph 50 of his moving affidavit, just the mere comparison will indicate the degree of the misrepresentaion. And in any event, it is a perfectly innocuous invitation to have a discussion of co-counsel and there are no evil deeds, thoughts, or whatever contained there.

Following the conduct of that meeting, five GM dealers settled, four of whom were represented at that meeting, and Mr. Ordman, of the Putney, Twombly firm, who represented three of those dealers is here today and he will testify, I am sure, if your Honor asks him, or confirm that his dealer clients specifically asked us whether we would indemnity th or pay their legal fees and we took the same position with them that we have with everybody else since the inception of this action that we will neither pay their fees nor indemnify them.

Now, he has also gone on to seek to involve us in an intramural squabble between the principals of Consumer Auto Leading, the Bergson group and Nabcor.

I don't recall if your Honor recalls that whole sordid mess but we had absolutely nothing to do with it and we had a perfectly good business reason for doing what we did, namely, give a moratorium for the principal payments which were owed by Charge A Car on the payment by Nabcor of $50,000. Charge A CAr was a large customer of GM and it was an important department store customer, and Mr. Burg, and the very papers enacts --

THE COURT: This is just so far ahead of anything that I can follow or comprehend. I don't understand much of what you are talking about, I have not read these papers, I have directed my clerk not to read these papers, and I am not going to read these papers until I have reason to read them. We are indeed, Mr. Person, trying to get ready for trial. And the efforts of everybody should be directed to that. And I have a file with me,two inches of papers, which adds two inches to an already way overly voluminous file in this case.

Now, I want to know from you -- Mr. Kleinbard starts answering a motion. I don't know what he is talking about. I want to know from you what your motion is.

MR. PERSON: Your Honor, I have made this motion for an injunction to try to break up what is essentially a combination of the defendants in violation of several statutes, the Civil Rights Act, and also --

THE COURT: Wait a minute. Let's not talk about -- tell me what somebody is doing that you need a preliminary injunction about.

MR. PERSON: No. 1 -- it is a variety of things, your Honor. No. 1, Mr. Kaplan was soliciting people to bring suit against Nabcor.

Now, I would like to argue that that is illegal. Now, is there any response to that? I mean, do they say yes, they did it or no, they didn't.

THE COURT: Just a moment, you tell me what Mr. Kaplan has been doing to solicit lawsuits against Nabcor, and what evidence you have got and where is it in your papers. Let us just take up your affidavit right now.

MR. KLEINBARD: Page 20, your Honor.

MR. PERSON: Page 9, paragraph 15.

THE COURT: It says throughout 1971 and prior to the determination by this Court of the issue whether there could be a class action, Lewis Kaplan of Paul, Weiss solicited at least 11 franchisees of Nabcor without the knowledge of plaintiffs and without the knowledge or approval of this Court, and encouraged and pursued Nabcor, and so forth. And we have Exhibit B consisting of nine pages of corresponding relating to Mr. Kaplan's communications.

Now, what I want to focus on is the same kind of thing I wanted to focus on at the time of the first preliminary injunction motion, that is, your necessity of acting by way of an immediate motion for preliminary injunction.

Now, if I see, in paragraph 9, that this conduct went on in 1971, then the first thing I am really bothered about is why do we suddenly in 1975 have a motion for preliminary injunction?

Is this something Mr. Kaplan, according to you, is now doing, or is this something that went on in 1971??

MR. PERSON: It went on at least in the year that was referred to, the year 1971, maybe other years, but --

THE COURT: Do you have any evidence that it is going on now or threatened to go on in the future?

MR.PERSON: I don't know, your Honor.

THE COURT: You don't know but you are moving for a preliminary injunction?

MR. PERSON: That is right.

THE COURT: And you talk about 1971 events?

MR. PERSON: Your Honor, I am asking you to take the affidavit in its entirety with a variety of things that are occurring to Nabcor that have occurred, most of which is attributable to GM, GMAC and the Paul, Weiss firm.

THE COURT: There does come a time, Mr. Person, that just in the management of this litigation I have got a responsibility to police what motions are going to be made, and it does seem to me that if you serve, and if we dealwith the preliminary injunction motion based on a 78 odd paragraph affidavit, and if everybody has to answer thi we are going to be swamped with papers which I want to know whether it is worth being thus swamped.

MR. PERSON: May I try to set the focus of this particular --

THE COURT: I want to find out. You pointed out that allegation of wrongdoing and you have said that the conduct went on in '71, you don't know of it going on now, or being threatened.

Is there anything in here, anything in here which you charge going on now or being threatened to go on in the future?

MR. PERSON: Yes.

THE COURT: What is that?

MR. PERSON: That is, that there is a combination of defendants who are not --

THE COURT: Where is this charged?

MR. PERSON: Throughout the entire affidavit, your Honor.

THE COURT: You pointed out something specific.

MR. PERSON: The specifics that I have are not paying their own expenses, in many cases, that Paul, Weiss or GM is picking up most of the cost of this litigation, Paul, Weiss --

THE COURT: How am I to enjoin that?

MR. PERSON: I am saying that as a matter of law that is an illegal combination, and what they are doing is preventing the other defendants from being real parties in interest in this litigation and they are causing me and my clients to waste our time suing people that have essentially no interest in the outcome of the suit and that's wasting the Court's time and my time.

THE COURT: You can drop those people.

MR. PERSON: I would rather not. If they are liable, and I believe they are, I would like to obtain a judgment against them.

THE COURT: You are saying in effect that General Motors is financing them so that they won't pay you something in settlement?

MR. PERSON: Not that they won't pay me, they have no interest in this suit. They are not really parties in interest because even if a judgment came against them, General Motors would probably put up an appeal bond and everything else.

THE COURT: Are these people?

MR. PERSON: The other defendants.

THE COURT: How many of them? Name them. Are they named in this affidavit of yours?

MR. PERSON: I don't know if I named each and every -- yes, I have, as a matter of fact.

THE COURT: Where do you deal with this subject matter in your affidavit?

MR. PERSON: I listed the names of the defendants on page 24.

THE COURT: All right.

MR. KLEINBARD: Paragraph 29?

MR_ PERSON: Yes.

THE COURT: Now, let me just get this. Is there something in your affidavit which says that General Motors or Paul, Weiss is paying the defense costs of the entities listed in paragraph 49?

MR. PERSON: Yes.

THE COURT: Where is this in your affidavit?

MR.PERSON: I have in one instance, for example, the fact that the Buffalo Better Business Bureau has not paid one cent in legal fees from the commencement of the case to the present.

THE COURT: Where is that in your affidavit?

MR. KLEINBARD: 75, your Honor, I believe is what he is referring to.

THE COURT: Paragraph 75 deals with the fact that Mr.Shaw of Breed, Abbot & Morgan, representing a Better Business Bureau during a hearing on November 26, 1974, in the -- that's in the other case, isn't it, Mr. Person?

MR.PERSON: No, that was in this matter, your Honor. That he came in here and said this is a very burdensome suit for the defendants, the three Better Business Bureaus.

Actually as I found out one of them didn't pay legal fees for four years. Martindale, Hubbell says this same law firm representing the Better Business Bureau in Buffalo has represented GM locally, is not paid fees for four years, that means the legal fees can be paid for other work that they do through General Motors.

In other words, that the defendants are not paying their own way. One defendant hasn't even bothered to answer, hasn't bothered to produce any documents and in fact the law firm hasn't been paid for four years.

THE COURT: What do you propose to do about it?

MR. PERSON: I want a junction to break up the combination so every party is on his own defending this action because otherwise we have a lot of defendants that ha no interest in the outcome of the suit, and what I would like to do is have them have an interest.

THE COURT: What do you want to do? Do you want to terminate? Settle?

MR. PERSON: I want to have a junction and maybe they will consent to it since they say they are not doing it anyway. All we need is the junction and not the hearing.

If they say they don't do it I don't think they would object.

It is on the front page of the notice of motion.

THE COURT: This is almost incomprehensible. You are talking of one defendant here, this is the Better Business Bureau of Metropolitan New York. Is that a defendant?

MR. PERSON: That is a defendant.

THE COURT: Take it one step at a time with me.

The Better Business Bureau of Metropolitan New York is a defendant?

MR. PERSON: In this matter, yes.

THE COURT: And represented by Breed, Abbott & Morgan?

MR. PERSON: No.

THE COURT: I asked you about the Better Business Bureau of Metropolitan New York. Are they represented by Breed, Abbott & Morgan?

MR. PERSON: Yes.

THE COURT: Is this the situation where you commenced an action against them in the Eastern District?

MR. PERSON: It has no bearing to that action.

THE COURT: Answer my question.

Did you commence an action in the Eastern District?

MR. PERSON: Yes, I did.

THE COURT: Did we have a hearing about that problem?

MR. PERSON: Yes. You recommended a transfer from one district to the other.

THE COURT: We are talking about this case and not the newspaper case.

Right?

MR. PERSON: That is correct.

THE COURT: What happened as a result? Has that been transferred?

MR. PERSON: No. I am opposing that.

THE COURT: I have not dismissed the claim or transferred the claim against Better Business Bureau of Metropolitan New York to the Eastern District, right?

MR. PERSON: No, sir.

THE COURT: So it is still pending?

MR. PERSON: Yes, sir.

THE COURT: What are you claiming has been done wrong by Breed, Abbott or the Better Business Bureau of Metropolitan New York?

MR. PERSON: I am claiming there has been four years of litigation for the lawyers for the Better Business Bureau which doesn't happen to be Breed, Abbott.

THE COURT: We can't speak to the Metropolitan.

MR. PERSON: It is only that Mr. Shaw was here on behalf of the Better Business Bureau.

THE COURT: What did the Better Business Bureau have Metropolitan New York do that was wrong that needs to be enjoined?

MR. PERSON: I am not totally -- in other words, I don't know all of the facts with respect to each of the defendants so I readily admit that in the case of the Metropolitan Better Business Bureau I don't know if they have the same situation as the Buffalo Better Business

Bureau. The Buffalo Bureau is a defendant who for four years has litigated at no expense and I am saying --

THE COURT: Are they represented by an attorney?

MR. PERSON: Yes.

THE COURT: Who is that attorney?

MR. PERSON: I don't know the full name of it.

THE COURT: Is it a Buffalo firm?

MR. PERSON: Yes.

THE COURT: They have appeared?

MR. PERSON: Yes. They have appeared.

THE COURT: They are not represented here today, are they?

(Pause.)

THE COURT: Are you claiming that General Motors is paying the legal expenses of the Better Business Bureau of Western New York?

MR. PERSON: I am saying this same law firm represents General Motors legally and has not been paid any legal fees by its defendant in four years. I am asking you take cognizance of an inference that can be drawn or at least open it to a hearing to see what is going on.

THE COURT: I will not do so.

MR. PERSON: I am bringing out the facts I have.

THE COURT: I don't think that means anything. I don't think it is worth having a hearing about.

MR. PERSON: There is a combination of defendants --

THE COURT: To me, Mr. Person, this case as illustrated by this afternoon has consumed a vastly inordinate amount of the time of a lot of lawyers. We have a roomful of lawyers sitting here listening to these proceedings who are obviously charging their clients for their time and it really is kind of appalling to see them all come in and sit here and go out and know that somebody is having to pay for this. This to me goes on time after time. It is wasteful.

MR. PERSON: Are you interested in whose pays for it?

THE COURT: I am really not.

MR. PERSON: I am claiming that they are not paying their own way and General Motors is.

THE COURT: Unless you have something more specific for me to get into I would say that the inference I would draw from the fact that the Better Business Bureau of Western New York has not paid its lawyer is probably the usual reason people don't pay their lawyers. They are usually waiting for the outcome of the suit, or they can't afford to, or the law firm is slow in billing, or a lot of other reasons, or maybe the law firm has not done much work.

MR. PERSON: If any of the defendants had the same situation would there be any number that could show you there is this thing I am claiming?

THE COURT: I asked you for illustrations and you gave me this one.

MR. PERSON: Luby Chevrolet and Paragon Oldsmobile have not paid legal fees in four years.

THE COURT: Are they represented by an attorney?

MR.PERSON: Yes.

THE COURT: Where is Luby Chevrolet?

MR. PERSON: In Queens.

THE COURT: Herbert K. Kannerack. Is Mr. Kannerack here?

(Pause.)

THE COURT: How would you know they have not?

MR. PERSON: The lawyer told me they have not been paid for four years.

THE COURT: Does he say they are being paid by Mr. Kleinbard or General Motors?

MR. PERSON: They do not.

THE COURT: Do you have any reason to believe that?

MR. PERSON: General Motors appears to be picking up most of the costs.

THE COURT: What do you mean"appears to be picking up most of the cost?"

MR. PERSON: They are carrying the litigation for most of the people.

THE COURT: Mr. Kleinbard's firm is acting as lead counsel for the defendants and in the presentations to the Court generally he makes the presentation. This is true, hopefully, in any multi-defendant case of this kind and I draw no inference from Mr. Kleinbard's acting as lead or liason counsel. I draw no inference from that that he is offering to pay anybody else's legal expenses.

MR. PERSON: I would say the inferences are clear that somebody is paying for these legal expenses, litigation expenses, other than the defendants themselves and that --

THE COURT: Luby Chevrolet, you say that his attorney says he has not been paid, right?

MR. PERSON: In four years.

Paragon Oldsmobile likewise.

THE COURT: Let us talk about Luby Chevrolet.

Has Mr. Kannerack ever been in court here?

Has he ever appeared?

MR. PERSON: It is not only appearance.

THE COURT: Please. I am asking you.

MR. PERSON: I don't know.

THE COURT: Do you know how much service he has rendered to which --

MR. PERSON: If he has not rendered any services at all I would say that that does prove the point they are not being effectively represented by counsel.

THE COURT: It proves that they may be efficient.

MR. PERSON: If they don't put any time in?

THE COURT: Right.

MR. PERSON: I believe they have to put in a minimal of time to represent the defendants otherwise there is a conflict in interest.

THE COURT: Mr. Person, if I were Mr. Kannerack, or if I were Luby Chebrolet, I would tell Mr. Kannerack "You do the absolute minimum. Don't do anything. There are a dozen lawyers over in that courtroom and let them take the lead and I don't want to pay you a penny more than I have to and hopefully I don't have to pay you much of anything."

I draw no inferences at all from the fact that Mr. Kannerack has not gotten paid. That means nothing.

What other instances do you want to bring to my attention?

MR. PERSON: Paragon Oldsmobile. A similar situation.

THE COURT: Do you have any further information about Paragaon Oldsmobile?

MR. PERSON: They have not paid their legal fee in our years.

THE COURT: That means nothing on its face.

MR. PERSON: I am saying when you have a monopoly you can't extend the monopoly by joint litigation in this fashion with a monopoly covering the forty other people. That is a rule of law I will have to assert because that is causing the extensive litigation that we have. They are trying up the Court as a result of this. The people are not litigating with their own interest. They are strictly under the umbrella of General.Motors. General Motors appears to be financing most of this. The other defendants don't appear to any great extent. I ask that the Court enjoin that and the people be on their own.

THE COURT: All that you have said to me about these specific instances simply indicates that General Motors is doing what I knew General Motors was doing all along, that is employing Paul, Weiss who is acting as the lead or liaison counsel in this court.

MR. PERSON: Are they acting as agents of these other defendants when they are soliciting people to sue my client?

THE COURT: Wait a minute. I could not under any circumstances find anything in what you have said and what has been presented to me so far by you which would justify even holding a preliminary injunction hearing. If you want to give me other specific instances,go ahead.

MR. PERSON: I urge you to read the affidavit. I prepared it at great length with every intention of carrying through with this. I feel this is a denial of justice as a result of this combination.

THE COURT: Mr. Person, if I read this affidavit other parties have to respond and I tell you I am not going to even permit a motion to go forward unless I hear from you today some cause to have this done. You can give me other instances that you want to call to my attention. Don't ask me rhetorical questions. I amasking you for instances of wrong doing involving the 15 or 20 companies listed in paragraph 49. We have gone through three or so and if you want to mention any other specific instances you may do so now.

MR. PERSON: General Motors from the information which I have set forth in the affidavit you can conclude --

THE COURT: No. You have listed Chrysler, Gotham Ford, New York News, and so forth. What information about wrongdoing do you have as to any of these people?

MR. PERSON: What I am saying is that there is a combination which is illegal under law, and a combination according to the Supreme Court in California Transport case is illegal.

THE COURT: Have you got any information, and I mean specific information, set forth in this affidavit or that you can give me which indicates that General Motors counsel is doing anything more than acting as lead counsel?

MR. PERSON: They are lead solicitors to obtain people to sue Nabcor.

THE COURT: That we have covered and that went on in 1971 and there is no reason to have a preliminary injunction. I want to know something else.

MR.PERSON: I don't know that they are not doing it. We have other franchisees threatening to sue Nabcor.

THE COURT: You told me you know of no activity going on.

MR. PERSON: I don't have information. I am asking you if we can have a hearing to determine it.

THE COURT: You provide me no reason to have a hearing because you have not provided any facts in your affidavit about any current activity, have you?

MR. PERSON: The current activity is the interference with the settlement attempts. That in itself is wrong. It is illegal.

THE COURT: What do you say goes on as far as the interference with settlement attempts? Who is doing what?

MR. PERSON: I made telephone calls to most of the defendants' counsel with the exception -- well, even to Ford's counsel and I offered a settlement opportunity.

THE COURT: In the amount specified in paragraph 49?

MR. PERSON: That is correct.

THE COURT: Do you have any evidence that General Motors or Paul, Weiss has attempted to prevent these people from settling?

MR. PERSON: On or about November 11th Mr. Kleinbard wrote a letter to all the defense counsel. I have never seen a copy of the letter. I only heard from several counsel there was such a letter and I used my deductive power to try to reconstruct the letter from what I have heard. I knew of it.

MR. KLEINBARD: He put it in his affidavit and swore to it on the basis of the deductive powers which I must say I find very unconvincing.

THE COURT: Just a moment. Let us have none of that.

MR. PERSON: I am saying --

THE COURT: Do you see anything in the letter --

MR. PERSON: This letter was an attempt to -- I am reading the letter for the first time, your Honor -- I understand that this letter had the effect of indicating to the defendants the desire of General Motors not to see settlements occur.

THE COURT: The letter --

MR. PERSON: I don't see as much in the letter --

THE COURT: I don't see anything at all along that line. Do you have any other information indicating some improper activity on the part of Paul, Weiss or General Motors to frustrate settlement?

MR. PERSON: They are calling the meeting at that time. I don't know what went on at the meeting but the effect of that meeting inhibited or killed these settlement possibilities.

THE COURT: I will say right here and now that I would draw no adverse inferences of anything that I could conceivably enjoin. I will state that right now.

Do you have any other information?

MR. PERSON: I had several defendants' counsel state their clients had to seek approval from General Motors before obtaining settlement.

THE COURT: Who? Is that in your affidavit?

MR. PERSON: I don't know if the names are. I don't know if I put the names in.

THE COURT: What are the names?

MR. PERSON: I will have to go back. I think that Luby Chevrolet was one, counsel for Luby Chevrolet. And I think there was somebody in Buffalo but I would have to go back and check.

THE COURT: Anyone else?

MR. PERSON: I am not sure to tell you the truth. There were two or three that said that would be necessary.

THE COURT: Who told you this?

MR. PERSON: The counsel for --

THE COURT: Mr. Kannerack? Did he say that to you?

MR. PERSON: I believe that he is the one who said that, yes.

THE COURT: Did anybody else say that to you?

MR. PERSON: I believe that one or two other people said that as well.

THE COURT: Can you be specific?

MR. PERSON: I would rather go back and look at my records and try to determine who it was before making additional statements.

THE COURT: You have records of these conversations?

MR. PERSON: I have notes of the days--

THE COURT: You have notes of what Mr. Kannerack said?

MR. PERSON: I don't know if I have notes but I would have to go back and look.

THE COURT: You say you have notes of such conversations?

MR. PERSON: I say I do have notes but I don't know if it is reflected there but I think I can recall who it was by looking at the notes. The names might ring a bell at this point. Several of the GM defendants, dealers --

THE COURT: What other occasions have you got that there was any improper interference?

MR. PERSON: We have only the inference to be drawn from the -- this ties in to the fact that General Motors appears to be financing the litigation for most of the defendants, and that the --

THE COURT: We have already gone through that.

MR. PERSON: It is part of it. It has to be taken in context with it. The law firm for Ford Motor Company, that is, the antitrust counsel for Ford Motor Company in Pennsylvania was soliciting people to sue Nabcor.

THE COURT: When was that?

MR. PERSON: Back in I guess '71, the Gerson-Mesroff incident.

THE COURT: We do not need a preliminary injunction about '71 events.

Anything else?

MR. PERSON: It appears from the documents and other evidence that I have set forth in the affidavit that a General Motors official, Mr. Burg, met with Mr. Bergelson -- met five times with Mr. Bergelson.

THE COURT: Who is Mr. Bergelson?

MR. PERSON: A feelow who had an agreement with Nabcor to become a part of Nabcor.

THE COURT: When was this?

MR. PERSON: Bac in late '71, early '72.

THE COURT: The transaction that you are talking about is anything going on about that today?

MR. PERSON: I would not have any evidence to say that it is. The problem is through that these transactions is don't -- that we were not fully aware of them until later so it is until last July or September or so that I deposed Mr. Burg that I was able to put more of the information --

THE COURT: You don't get a preliminary injunction about '71 events any more than the other one.

MR. PERSON: What I am trying to suggest though is that the events that are occurring are all directed to a policy of destroying Nabcor economically in a way that isn' privileged by the mere fact that we are parties in a lawsuit, and that these other instances are no more than examples of the overall conspiracy to cause economic difficulties by virtue of keeping the litigation as big as possible, having all of the defendants with no interest whatever in getting out and that way to keep the costs, the length of time for the suit all to the disadvantage of Nabcor and to the advantage of General Motors.

THE COURT: Okay, Mr. Person, I am going to say right now that I find, and I know that in a normal preliminary injunction motion, if a Court denies that motion, there needs usually to be much more in findings of act and conclusions of law than what I am laying out on this occasion, but I am saying to you that I find that there is nothing that you have called to my attention today, or nothing that I know about this action from my observation of the conduct of the litigation that indicates the slightest bit of support for the statements that you have just made.

I am concerned in this case more than almost any case that I have handled so far on the court with the amount of wasteful legal work and the amount of voluminous papers that are generated virtually like in the Sorcerer's Apprentice.

It is simply appalling. And I am continuing in an effort to try to stop that, and one of the steps I am taking now is to deny your motion here and now, and I will deny it, and I am stating that no defendant needs to respond to it, and I am denying it on the basis of the record we now have.

Again, it is an unusual step but it seems to me necessary to keep the action going on something in the way of a profitable line instead of having diversions on fruitless injunction motions.

MR. PERSON: Your Honor, I would like to--

THE COURT: Now, if you want to submit to me an affidavit about your conversations with specific attorneys who have told you that they believe that their clients have to get consent from General Motors, that you can do, and I will expect such an affidavit to include any notes that you have made which would support those statements. That I will certainly redeive, and if there is any reason to reopen this motion on the basis of that kind of a specific affidavit, I will consider reopening the motion.

MR. PERSON: I would like to point out, your Honor, that in this affidavit I do detail the facts which I offer as proof to show a monopoly on the part of General Motors and as a result I claim that the activities of the joint defense by monopolies are per se illegal and I am goin to try to get a ruling on thatpoint, so I am making an offer of proof that General Motors is a monopoly and that they do n have the right according to law to have this joint defense. That is a very essential thing that I am going to be --

THE COURT: The point is, Mr. Person, I am talking about a procedural problem. I am talking about the question of whether at this juncture in the case, we are going to stop or divert ourselves from other work to handle an emergency preliminary injunction motion, and I am saying that before -- I am saying that because of the record in this action, I am requiring you here and now to make some kind of an indication to me of the necessity of handling your problems as a preliminary injunction matter here and now, and I find nothing in what you have told me to indicate such a need and therefore I am not going to proceed with this motion, except in the limited context I told you. I am denying your motion, except that you are at liberty to submit the specific affidavits which I have just described, and if there is a reason to reopen this motion, I will do so at that time.

MR. PERSON: Your Honor, I'd like to make the point that the problem of the joint defense is a particular problem up to the present time. Therefore, the immediacy of the problem results from this combination which I am trying to have enjoined. But I understand your position.

I just don't agree with it and I ask that you do read the affidavit and the memorandum of law, also the letter dated January 12, 1975, because I think that my case is spelled out fairly well there.

I haven't been able to articulate the full thing here before you today.

Now, to pass on to other matters, your Honor.

THE COURT: I am saying --

MR. KLEINBARD: Your Honor, may I --

THE COURT: Look, I realize that it may appear arbitrary or may appear in some other way wrong for a Court to say they won't read an affidavit. But I am saying to you that I will not consider this affidavit, and it isn't because I can't read 78 paragraphs of printing. But it is because if I get into this, it will occasion the necessity for all these other defendants, who are charged with wrongdoing, to file answering papers. And I do not feel that it is a proper way to go forward in this litigation to even have that process carried out. So I am telling you very candidly and bluntly that I will not consider your affidavit or your brief and I am denying your motion on the basis of your presentation to me orally today, with the exception that I mentioned, which gives you leave to submit certain specifics, if you wish to do so.

MR. PERSON: Your Honor, on an appeal will you say that there is a waiver -- well, not a waiver, but will you say that I am not prohibited from raising matters on appeal that appear in the affidavit? I don't know if I have been complete in my presentation, particularly the offer of proof with respect to the monopoly.

THE COURT: That is up to the Court of Appeals. If you want to figure out -- if you want to go up to the Court of Appeals on this motion, you have the records you have got and that's that. It is up to the Court of Appeals what they want to consider.

MR. KLEINBARD: Your Honor, I am sorry, but on that particular issue, I am very seriously disturbed. These papers, and the matter that Mr. Person brought to your attention, make very serious charges about my firm and about Mr. Kaplan in particular. And I don't want this case going to the Court of Appeals without any opportunity to have a record responding thereto on behalf of the firm and of Mr. Kaplan.

These are professional matters independent of the merits. I am not at all concerned about the merits and I would assume that a good many of these other people who are sitting here implicitly being accused of the same thing that we have been explicitly accused of doing, feel the same way.

THE COURT: Mr. Kleinbard, if you want to file papers, you file them, but I am adhering to my ruling and I will not consider them.

MR. KLEINBARD: I understand, your Honor. All I am saying is that will you please refrain from signing an order which would make this appealable for, let us say, thirty days, to give us a chance to put in something. I don't want to take the time away from preparing for this case and therefore I would like to move on with this case but I can't simultaneously getting in an affidavit to protect the record in the event of an appeal, so I am just saying I don't disagree with your Honor's ruling at all, but would you please refrain from signing an order so as to give us a chance to file something that this doesn't go up unchallenged These are very serious charges.

THE COURT: This is a kind of a messy situation. I am now denying the motion. I assume that if you can appeal from the denial of a preliminary injunction you could appear conceivably from what I have done today.

Now, if you want to -- frankly, Mr. Kleinbard, I don't think there is anything that should occupy an Appellate Court at this point.

MR. KLEINBARD: I couldn't agree with you more, your Honor.

THE COURT: And it is nothing that should occupy th District Court but you have got to figure out a way to handle it the best way you can.

Okay.

MR.PERSON: Okay, I am following your order with respect to other matters and I have a set of interrogatories that I propose to propound, and this is a set of interrogatories with requests to produce documents.

MR. KLEINBARD: Your Honor, this is in response to the article that was in the New York Times the other day involving some discharge by Chevrolet of some employees. I don't know what in the world it has to do with this case and any time anything happens anywhere with respect to General Motors we have to get a set of interrogatories we will just never get to try this issue.

I haven't read all of them but it is perfectly obvious that it is what it refers to.

THE COURT: I don't see why we can't go through them right here.

MR. PERSKY: Your Honor, excuse me. If you can read the article annexed as Exhibit A, it is a New York Times article of recent vintage --

THE COURT: Mr. Person, you ask in interrogatory No. 1 for identification of each employee of the General Motors zoned for New York City and/or Long Island who from September 1, 1974 to the present was terminated from his employment by reason of dismissal, resignation, transfer, promotion or retirement and then you go on interrogatory 2, to ask all about the circumstances. Now, what is the point?

MR. PERSON: I have been taking depositions by category, that is, I have been deposing newspaper defendants or manufacturers at the fleet level or Better Business Bureau defendants, and one category of defendant which was the next to come up or maybe the one after or maybe the zoned personnel. Obviously I have been deposing people in the New York zone, and I see that right at about the time at which I would be deposing some of the zoned personne the entire zone staff is fired for reasons that the employee themselves --

THE COURT: Are there any particular persons that you wish to depose that you have noticed and that you a now being told are no longer employed? Are there any particu problems that you are faced with?

MR. PERSON: I would like to find out who these people are who were fired.

THE COURT: Please, answer my question.

MR. PERSON: The answer is I don't know who was fired. Anyone.

THE COURT: It isn't a matter, you are not suing because of the firing of these people. You are suing about a particular problem that you say existed with Nabcor.

Now I assume you have got some people you want to depose, right?

MR. PERSON: I have been working in the dark to a great extent because of your vacation of all my interrogatories, seven or eight sets, so since I have no information to go on, I know the entire zoned personnel were fired and some of these people --

THE COURT: That in and of itself has no relevance at all.

MR. PERSON: I want to find out who these people are, talk to them and find out what they know about Nabcor.

THE COURT: Is this all you are going to tell me?

MR. PERSON: No. I have asked for an identify of each person on several lists of people that I either plan to depose or I intend to call as witnesses.

THE COURT: We are talking about interrogatories 1 and 2. Is this the only basis for interrogatories 1 and 2 that you can tell me?

MR. PERSON: The basis is that these people were fired under circumstances that have some connection with the case, warranty claims, fraudulent claims, we have made allegations to that extent. These people have information about that, they were fired for doing something that General Motors knows has been going on for years. In the article these people said, why do you fire us in New York only? You have known about it for a long time. Why us? I'd like to find out too.

THE COURT: You are talking about false warranty claims. That isn't the problem in this.

MR. KLEINBARD: It's employees' dishonesty, your Honor.

THE COURT: Look, Mr. Person, I told you that when I struck your interrogatories that you were at liberty to come back with some specific interrogatories of a limited nature. But obviously, they have to relate to this case.

MR. PERSON: Your Honor, do you know we have had to give the name --

THE COURT: Interrogatory No. 1 does not relate to this case as drafted, and I am striking it. Interrogatory 2 doesn't relate to this case as drafted, and I am striking it.

Now let us look at interrogatory 3. Same for 3.

Now, 4, let me see 4.

MR. PERSON: I want to know if they fired any of the people who were on my list of witnesses.

THE COURT: As to any former GM or GMAC employee named or described, in statement by plaintiff identifying officials and employees of defendants to be deposed by the plaintiffs. I guess what you want to do is to have a statement as to any of those that have been fired.

Now, what about that, Mr. Kleinbard?

MR. KLEINBARD: Beg your pardon, your Honor?

THE COURT: I am focusing on 4.

MR. KLEINBARD: Yes. He gave us a list of witnesses that he wished to depose. He wants to know whether any of those people have been terminated? Is that the question?

THE COURT: Yes.

MR.KLEINBARD: I will be glad to tell them.

MR. PERSON: And the reasons for their termination.

MR. KLEINBARD: I will tell them if they have been terminated. It is up to him whether he wishes to depose him from thereon in.

THE COURT: Paul, Weiss as to answer 4 to the extent of identifying any of those persons who have been terminated.

Now, 5 --

MR. PERSON: This might be a threat to keep the dealers -- it might be to suppress their testimony by hanging something over their head, local dealers.

THE COURT: That is almost fantasy. Not almost, it is fantasy. I will strike interrogatory 5.

MR. PERSON: The dealers do -- we have had plenty of affidavits to show the pressure which GM and the other factories exert on the dealers. I say it is obvious that this is no more than additional pressure. Whether it is for the purpose of a suit or not, I don't know. I'd like to find out.

THE COURT: That is the point. You don't know.

MR. PERSON: I'd like to find out.

THE COURT: Well, this goes so far beyond anything conceivably connected with the lawsuit that I cannot possibly require an answer to 5.

Now, 6. 6 is again way, way beyond the issues in this lawsuit, any conceable issue. Strike 6.

7, on its face, has some -- what do you say about 7, Mr. Kleinbard?

MR. KLEINBARD: Well, your Honor, in the first place, I don't know how I would go about doing this but assuming I found out that there were some people terminated, if they were asked questions about Nabcor in connection with the preparation of this lawsuit I think that would be privileged material. I don't see that he would be entitled to get that kind of information.

MR. PERSON: I didn't ask what it was. I want to identify the people who they normally have to put in answers to interrogatories as people that have information about this. That is all I am asking for, not the nature of the contact, but just the --

THE COURT: This is such a back-door way of possibly getting at somebody that you might possibly not find out about through the normal channels.

MR. PERSON: What is the channel, your Honor.

MR. KLEINBARD: You named over a hundred people you wanted to depose. Why don't you depose them?

THE COURT: We ha-e been through this many times. The plaintiffs have undoubtedly had dealing with people in agencies and maybe even conceivably in General Motors. There are documents that have been produced. It seems to me that like any normal litigation, the people with knowledge about Nabcor are going to be identified through the normal channels I have just talked about.

Now to go and try to ask everybody who was terminated whet her somebody ever talked to him about Nabcor really doesn't mean anything.

MR. PERSON: There are 800,000 employees, your Honor. I am merely trying to identify the ones that had some knowledge about Nabcor and I find it difficult to take 800,000 depositions when you terminated my request to take about 20.

THE COURT: I am striking 7.

MR. PERSON: I am asking for an identification of the GM official primarily responsible for these four or five categories of structural problems we have in the case for the purpose of deposing that individual. At one time you directed General Motors to produce the names of the two people who knew about compensating balances. To date, nothing. Discharge policy documents you said they should deliver to date. Nothing. And so on. I'd like to see now to what extent we are able to go into these.

THE COURT: May I suggest these? Are we through with the interrogatories about the recent termination of employees?

MR. PERSON: Yes.

THE COURT: I take it you are trying to have more focused interrogatories about the merits of the lawsuit.

MR. PERSON: The structural end of the lawsuit.

THE COURT: Now, can I ask you to do this: It is awfully late and I think that I will let you -- well, there are only a few.

MR. KLEINBARD: Your Honor, could we have the opportunity to read these and then let him know whether

[illegible]

we have any objection to any of them.

THE COURT: I think we have to.

I think that these probably cannot be considered intelligently here and now. So, let us, starting with 8 and take the rest of the requests and if we need another hearing we will have another hearing. I would hope that on -- we have another hearing on interrogatories we just don't have to have -- can't you show -- I will not deem it conspiratorial -- can't the presence of Paul, Weiss relieve the necessity of some of these attorneys coming?

MR. MORRIS: Your Honor, I would be very happy. The burden of this is particularly apparent to those of us that come from out of town. I come down from Rochester, the headquarters of the Gannett newspapers, which is representing Westchester, Rockland.

I think I must have been here twelve or fifteen times on these things. And I guess there is almost the first time I have had a chance to say anything, but I certainly strongly support any effort that your Honor can make.

THE COURT: Maybe you can get together. It seems to me there are different types of hearings.

Now if you have got a hearing on a preliminary injunction motion, or a discussion of that today, involving a lot of the defendants in the kind of a way that you can't foresee what's coming, maybe you needed to be here, but I think if we have a meeting, we might be able to have a short meeting to resolve the question of interrogatories.

Now, it does seem to me that on that kind of a meeting, it is not productive to have very many people here. It is just a waste of time.

MR. KLEINBARD: I couldn't agree more, except to the charge that their failure to be here is evidence of the conspiracy and that we are paying, taking care of their legal fees.

THE COURT: Nobody would rationally draw that inference. I mean, there has to be lead counsel, and I am just asking you, in the interests of conserving, if we have on short notice, if we have a hearing on discovery problems, it seems to me that to the extent possible it ought to be handled by Paul, Weiss who is the lead defense counsel, and I think it ought to be understood -- I don't think any Court of Appeals would ever really overturn this -- that I am expecting Paul, Weiss to be lead counsel, I am expecting them to be liaison, I am expecting them to do the maximum to save the time and expense of other parties and other attorneys in this action, and I am directing that that be done because that is the only sensible way to handle it.

MR. KLEINBARD: I think we have, your Honor, where we can.

MR. PERSON: I'd like to show they are a monopoly and you are allowing a monopoly to conduct this in favor of all the others.

THE COURT: All right, so, is there anything else we have to take up this afternoon?

MR.KLEINBARD: No, your Honor. I just would like to be relieved of the charge of being a monopoly, that is all.

THE COURT: All right.

MR. KLEINBARD: I would be very happy to let anybody else take this burden.

- - -

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of ~~my~~ (our) skill and ability, from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court

Proceedings on 1/24/75

U. S. DISTRICT COURT
FILED
MAR 10 1975
S. D. OF N. Y.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---x
NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs,
vs.
GENERAL MOTORS CORPORATION, et al.,
Defendants.
---x

70 Civ. 5421

Before;

HON. THOMAS P. GRIESA,
District Judge.

New York, January 24, 1975;
3.15 o'clock p. m.
(Room 129)

APPEARANCES:

CARL E. PERSON, Esq.,
Attorney for Plaintiffs.

PAUL WEISS RIFKIND WHARTON & GARRISON, Esqs.,
Attorneys for Defendants
General Motors et al,;
BY: MARTIN KLEINBARD, Esq.,
LEWIS A. KAPLAN, Esq., and
RICHARD MESCON, Esq.,
Of Counsel.

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THE COURT: I asked to have this conference just with the General Motors' attorneys and Mr. Person basically to rectify what I think was a mistake that I made at our last hearing. I am eager to avoid unnecessary paper work, but it now appears obvious to me it is going a little far to deny the preliminary injunction motion on simply an oral presentation by Mr. Person without letting any responding papers be developed.

We have gone over Mr. Person's affidavit. I do not think, in order to have a satisfactory response to this, there has to be a whole multitude of papers from every one of the defendants sitting in that room the other day, but I think it is necessary, in all fairness to everybody, to have the issue joined on the basis of Mr. Person's affidavit and his brief and some limited submission on behalf of General Motors.

What I want to do is to set a schedule to get the papers in, and I am appealing to everybody to keep them at a minimum.

First of all, I want to know, from you, Mr. Person, do you want to submit any affidavits of the kind we spoke of last time?

MR. PERSON: No. 1, with respect to Mr. Maiorana, the affidavit in the form indicating the inform-pgs

ation has gone out to him by mail. That's No. 1. We will have that about his health.

THE COURT: I think you said you had been personally told by some people --

MR. PERSON: Two or three counsel from GM franchisees. I talked with a lot of people in two days. I have to go back and look at it.

THE COURT: Did you find any notes?

MR. PERSON: I do have notes. They don't reflect those comments. They only indicate the date and the amount. That's all. I will be able to recall when I look at these papers and eliminate certain people for certain reasons.

THE COURT: Look, Mr. Person, I just feel I have got to keep reign on this litigation, and I very much hope you do not expand the necessities of this motion by referring to a whole gob of outside people that General Motors is going to feel they have to depose. It is not worth that.

MR. PERSON: What I have, essentially, without more than what we are talking about here, is in my papers but, No. 2, I don't need a hearing if we can get the relief sought. I don't think the relief sought is that devastating, if, in fact, nothing is going on. If nothing is going on the relief sought --

THE COURT: Let's not assume that's the solution. You have to assume that is the motion which will be opposed and just you submit. It will be one affidavit from you.

MR. PERSON: That's all. A simple affidavit. I will have it in within four business days.

THE COURT: By the end of next week.

I think the thrust of this is, as I said, against General Motors and Paul Weiss, and you are the people to respond. I do not think we need a response from --

MR. KLEINBARD: I am not concerned with responses from other people.

THE COURT: I am.

MR. KLEINBARD: In the sense when I say I am not concerned, what I meant by that, I am not going to solicit responses from other people so that I am interested in our own response. But we have, perhaps, one person I may wish to support our affidavit on the facts and we have a deposition scheduled that we are trying to adhere to. I would like, if possible, 30 days, as I said in open court, from whenever I get this affidavit from Mr. Person. It will not increase the length of my papers but I don't want to be diverted from preparing for and taking the deposition.

MR. PERSON: 30 days seems like an awfully long time. My affidavit will be no more than one page.

MR. KLEINBARD: You submitted a monster here.

MR. PERSON: The 30 days can run from today.

THE COURT: 30 days sounds long to me, but I don't know any magic number.

MR. KLEINBARD: If I can get it in sooner --

THE COURT: 15 days instead of 30 days. What difference?

MR. PERSON: I will submit the affidavit on Monday. Why not cut it back?

THE COURT: Try to get it in in a couple of weeks.

MR. KLEINBARD: I will do the best I can to get the papers in as soon as I can.

THE COURT: Would you also do this:

Would you, in fairness to the other people, send a memo around to the other lawyers saying what we have done today and say that I have asked that they not submit papers. I don't believe at this point other papers are necessary. I would appreciate them not submitting papers. I don't want to be unfair to them, so if I feel it is necessary, if I feel there is a problem about some of the other parties, I will let them know before I do anything against them. Otherwise, they do not have to respond. We will leave it at that.

MR. KLEINBARD: Two quick matters, your Honor.

We were served with a notice of appeal, your Honor, and I take that in the light of this:

Mr. Person would consent to an order withdrawing his appeal. I don't think he has a proper appeal at this moment anyway.

THE COURT: I really apologize for that Monday. You take care of the appellate situation.

MR. PERSON: The last time I filed an appeal you withdrew it with the consent of Cahill Gordon. Now the consent would have to be, presumably, by all the parties --

MR. KLEINBARD: I have a proposed order which has you withdrawing it without prejudice to what might happen in the future.

MR. PERSON: I don't object to signing it if the order of that date can be vacated without prejudice.

THE COURT: Let's make the record clear now. It is implicit --

MR. KLEINBARD: There was no written order.

THE COURT: There was no written order.

I said the motion was denied. I say here and now, in view of what I have said today, it is implicit and I will make it expressly stated now, that my statements on the record at the last hearing about denying the motion are now being withdrawn and the motion is being reconsidered, and other papers are being received in accordance with what we have said today.

MR. PERSON: I will sign that.

MR. KLEINBARD: One more thing. I am sorry to be a nuisance.

When you signed the order about the doctor you neglected to put in access to records since January 1st. We did discuss that. I have a mandatory order. If you can sign that --

THE COURT: Yes, I will.

MR. KLEINBARD: We will try to make our affidavit in opposition not too much longer than that.

THE COURT: Yes, just about that size.

(Time noted: 3.20 p.m.)

Aff't in Further Support

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421A (TPG)

Plaintiffs, : AFFIDAVIT IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION, A PARTIAL SUMMARY JUDGMENT AND OTHER RELIEF

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, does hereby depose and say:

1. I am the attorney for plaintiffs and make this affidavit in further support of plaintiffs' motion for a preliminary injunction, a partial summary judgment and other relief, originally returnable January 23, 1975.

2. Annexed as Exhibit A is a copy of a letter from Paul, Weiss, Rifkind, Wharton & Garrison, dated November 11, 1974 addressed to "All Defense Counsel", signed by Martin Kleinbard, which appears to be the letter referred to in ¶ 50 of affiant's affidavit, sworn to January 8, 1975. My attempts to describe the contents of the letter appear to have included a description of some of the discussion among defendants' counsel which took place at the meeting of November 26, 1974. I based this on my discussion with Roger Waldman,[1] Esq. of Messrs. Putney, Twombly, Hall & Hirson (counsel for 3 dealers which settled). What took place at that meeting is important in connection with plaintiffs' motion. GM's counsel appears to have used the meeting to prevent defendants from settling with plaintiffs on other than nominal terms, for the reasons set forth in plaintiffs' affidavit in support of the motion. It would

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[1] Mr. Waldman said he attended the 11/26 meeting and he alluded to some of the discussions thereat.

seem to be in order to have sworn statements from the participants as to what discussions took place at the meeting relating to plaintiffs' offers to settle this action with individual defendants (as distinguished from the package settlement offer made to GM). It seems clear that GM was not seeking to settle, and that the meeting was called in order to handle the problems raised by plaintiffs' settlement offers of small dollar amounts to the individual plaintiffs (corporations).

3. Counsel to defendants Luby Chevrolet and Paragon Oldsmobile advised me (several months ago in the case of Luby) that their respective clients paid no legal fees for most of the period of the action (except Paragon, which paid $1,000 or so at the outset). The information about Paragon was told to affiant more than a year ago. It is possible that the information was false and misleading, to give the impression that the action is of no consequence to the defendant or that the defendant was in a bad financial condition and could hardly afford to pay any more, thereby presumably justifying release by plaintif from this action.

4. Annexed as Exhibit B hereto is a copy of notes made by affiant on a list of lawyers representing defendants herein relating to telephoned offers by me to settle the action on an individual basis. Based on these notes and on independent recollection the following statements were made to me, it so seems:

(1) On 11/7/74 Herbert K. Kanarek, Esq., counsel to Luby Chevrolet, stated to me that he believed that Luby would be willing to settle for $3,000, but that Luby would have to check first with the factory;

(2) On 11/7/74 Sidney A. Weisberg, Esq., counsel to Paragon Oldsmobile stated to me that he did not know whether the offer would be acceptable and that his client would probably contact the factory; and

(3) On 11/8/74 Roger Waldman, Esq., counsel to Ruckle Pontiac, stated to me that his client would have to get approval first (which I took to mean approval from GM).

5. It is important to note at this place that I am not positive that each or any of the foregoing conversations took place in the above substance with the persons identified. I do recall that 2-3 attorneys for GM dealers advised me that their clients would first have to obtain approval to settle from GM, which I understood based on the total control that GM has over its franchisees. I assumed that each defendant would communicate with GM or its counsel with respect to my proposed settlements and therefore did not take the trouble to make notations to such effect when the 2-3 attorneys stated this. I have tried to narrow down the persons from the list, and have come up with the foregoing three persons, any one of whom (if not all 3) may in fact not have made the above statement to me at all or in the above substance.

6. What seems important, rather than what counsel for the dealers may have said to me, is what the GM dealers (and Ford dealers) in fact did do with respect to my settlement offers. Did any of them in fact seek instructions from GM or Ford as to what they should do about the proposed offers? If so, what was said and what was the purpose of GM's or Ford's involvement in such settlement transactions. Also, to what extent did any of the other defendants communicate with GM or GM's counsel to seek information on the advisability of settling with plaintiffs, and what was said. These questions should be answered.

7. Also, are there any notes or letters or other documents relating to any of these discussions regarding plaintiffs' settlement offers?

Carl E. Person

Carl E. Person

Subscribed and sworn to before me
this 27th day of January, 1975.

Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4800213
Qualified in New York County
Commission Expires March 30, 1976

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PETER J. ROTHENBERG
DANIEL P. LEVITT *

* MEMBER D. C. BAR ONLY

DIRECT DIAL NUMBER
2) 644-8184

November 11, 1974

To All Defense Counsel

National Auto Brokers Corp.
v. General Motors Corporation

Gentlemen:

It has come to our attention that plaintiffs have approached a number of the defendants in this action with settlement proposals and that in so doing they have indicated to some that settlement discussions have taken place between the plaintiffs and GM. The purpose of this letter is to inform you of the facts in this connection.

Last week plaintiffs' counsel approached us with an offer to settle this case which we regarded as outrageous and totally unacceptable. The offer was flatly rejected. There are no settlement discussions going on between the plaintiffs and GM and, apart from the plaintiffs' offer of last week, there have been none.

This would be an opportune time for defense counsel to meet to discuss future strategy for this case and, in the event any defendant wishes to discuss it, the desirability of a joint settlement proposal. We would be happy to host such a meeting at our offices on November 26, 1974 at 11:00 a.m. and would appreciate your letting us know whether you will attend so that we may reserve adequate space.

Very truly yours,

Martin Kleinbard

Martin Kleinbard

[illegible] A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

---------------------------------------x

70 Civ. 5431A (TPG)

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARTIN KLEINBARD, being duly sworn, says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys in this action for defendants General Motors Corporation ("GM"), General Motors Acceptance Corporation ("GMAC"), Frederic G. Donner and James M. Roche (hereinafter collectively the "GM defendants"). I make this affidavit in opposition to plaintiffs' motion for a preliminary injunction and other relief.

2. Plaintiffs' papers make a variety of charges against GM and my law firm -- all of which are baseless. But before even discussing them, a word is in order concerning the "evidence" on which this motion was made -- the affidavits of plaintiffs' counsel.

Plaintiffs' Affidavits

3. The moving affidavit is filled with statements concerning matters about which plaintiffs' counsel plainly has no personal knowledge. For example, we shall see that it contains what purports to be a detailed description of a letter

which plaintiffs' counsel later admitted he had not seen when he swore to the truth of his affidavit. Much of the affidavit, moreover, seems to consist of "inferences" -- one might better call them leaps of faith -- which apparently are products of what plaintiffs' counsel has termed his "deductive power." (Transcript, Jan. 20, 1975, p. 48). Still more is hearsay.

4. When the Court called upon plaintiffs' counsel to submit a further affidavit substantiating certain of his charges, a remarkable document was forthcoming. After making a number of vague and at least one erroneous statements about conversations Mr. Person allegedly had with other defense counsel,* the second affidavit states:

> "It is important to note at this place that *I am not positive* that each or any of the foregoing conversations took place in the above substance with the persons identified. I do recall that 2-3 attorneys for GM dealers advised me that their clients would first have to obtain approval to settle from GM, which *I understood* based on the total control that GM has over its franchisees. *I assumed* that each defendant would communicate with GM or its counsel with respect to my proposed settlements and therefore did not take the trouble to make notations to such effect when the 2-3 attorneys stated this. I have tried to narrow down the persons from the list, and have come up with the foregoing three persons, *any one of whom (if not all 3) may in fact not have made the above statements to me at all or in the above substance*." (Person aff., Jan. 27, 1975, ¶ 5) (emphasis added).

5. We respectfully suggest that affidavits so devoid of evidentiary content are not an adequate basis for granting

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* For example, paragraph 2 of Mr. Person's second affidavit (Jan. 27, 1975) attributes certain statements to "Roger Waldman, Esq." of the firm of Putney, Twombly, Hall & Hirson and states that he represents three GM dealers who have settled. Mr. Waldman, however, is with the Webster, Sheffield firm and represented only Ruckle Pontiac. Mr. Person seems to have confused Mr. Waldman with Mr. Ordman of Putney, Twombly, who represents Mark Buick, Marty Motors and Bano Buick.

relief of any kind. Moreover, the filing of such affidavits, particularly where they contain charges of misconduct based on nothing more than speculation, is irresponsible and unprofessional.

Plaintiffs' Claims

6. With these comments behind, I turn to the specifics of plaintiffs' motion.

7. The specific charges made by plaintiffs are that the GM defendants have:

(a) Interfered with plaintiffs' efforts to settle this action with other defendants. (Person aff. ¶ 12A)

(b) Paid "most if not all of the legal fees and expenses incurred by each of the other defendants" and otherwise financed the defense of this action for the other defendants. (Id. ¶¶ 43, 12C)

(c) Indemnified other defendants against judgments, losses and other expenses that may be incurred in this action. (Id. ¶ 12D)

(d) Promised to post or guaranty a supersedeas bond, or to pay the premium for such a bond, in the event of an adverse judgment in this case. (Id. ¶ 12E)

(e) Solicited The Celina Mutual Insurance Company, a judgment creditor of Nabcor, to attach Nabcor's interest in this action in connection with the enforcement of a judgment it has obtained against Nabcor. (Id. ¶ 12F)

(f) Conspired with Victor Bergelson and others to take control of Nabcor away from Frank

Maiorana for the purpose of discontinuing this action and to conduct an armed robbery of Nabcor's offices in order to remove business records, and granted credit to a company controlled by Bergelson in consideration of the alleged offer to discontinue this action. (Id. ¶ 12G)

In addition, plaintiffs charge that Lewis A. Kaplan of this law firm solicited a number of Nabcor brokers in Chicago and encouraged them to bring an action against Nabcor, offered to give them support in any such suits they might bring, and attempted to persuade them not to become members of a class in this action. (Id. ¶¶ 12B, 15)

The Financing - Indemnification Charges

8. The accompanying affidavit of Thomas B. Leary of GM's Legal Staff demonstrates that GM has not paid or agreed to pay any of the legal fees or other expenses of defending this action that are incurred by anyone other than the GM defendants, that it has not agreed to indemnify any of the other defendants against any judgments, losses or expenses that may be incurred in this action, and that it has not agreed to post a supersedeas bond, or to pay premiums thereon, for any of the other defendants.*

Alleged Interference With Settlement

9. Plaintiffs' charges regarding alleged interference with their efforts to reach settlements with other defendants boil down to two distinct claims. First, they argue that GM has opposed piecemeal settlements by other defendants and that its alleged financing of this action removes any fi-

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* As in most other multi-defendant cases, counsel for many of the defendants, including GM, have furnished one another with copies of documents without requiring payment therefor and otherwise incurred minor expenses of like nature in the course of this case. The amounts involved have been insignificant and do not amount to subsidization of the litigation expenses of other defendants in the sense of which plaintiffs complain.

nancial incentive for them to settle. Second, they appear to assert that GM has applied economic or other pressure to other defendants in an effort to prevent them from settling. Both charges are without merit.

10. The affidavits submitted herewith demonstrate conclusively that GM is not paying the other defendants' legal fees or expenses in this action and has not agreed to pay any judgments that might be rendered against them. All that could possibly be left of plaintiffs' first claim is the assertion that GM has stated that it opposes individual settlements by other defendants. While GM will not waive the privilege and disclose the substance of our discussions with counsel for co-defendants, it is our position that GM and its counsel have every right to express their opinions as to any proposed course of action affecting this litigation, including the advisability or desirability of settlement.

11. There is no need for any serious response to the charge that GM is pressuring other defendants not to settle. There is no evidence whatever to support the claim: Mr. Person's supplementary affidavit alludes to three conversations with counsel for other defendants and then goes on to state in substance that he is not sure the conversations ever took place. But beyond that, the affidavit of Thomas B. Leary, submitted herewith, negates any such charge.

12. Plaintiffs also make two specific allegations with respect to the actions of this law firm in connection with plaintiffs' settlement overtures.

13. The first of these allegations relates to a letter I sent to counsel for other defendants on November 11,

1974. The moving affidavit purports to describe the letter, and, among other things, plaintiffs' counsel swears that the letter stated in substance that GM was "outraged at plaintiffs' attempts to settle the action [with other defendants] for . . . small amounts, in comparison with the $5,000,000" offered to GM, and that GM urged counsel for the other defendants to contact Paul, Weiss before making any agreement to settle. (Person aff. ¶ 50)

14. Such statements, had they been made, would have been perfectly appropriate and would not have entitled plaintiffs to any relief. But the letter did not even make any such statements.

15. Annexed hereto as Exhibit 1 is a copy of the letter. A comparison of the letter with the account thereof contained in plaintiffs' moving affidavit reveals little similarity. That is hardly surprising, as plaintiffs' counsel later admitted that he had not seen a copy of my letter at the time he drafted and swore to the truth of his affidavit. (Transcript, Jan. 20, 1975, pp. 48-49)

16. The second assertion is that there was a meeting of defense counsel in our offices in mid-November, 1974, at which counsel for the GM defendants stated that GM "did not favor any of plaintiffs' settlement offers" to the other defendants and that GM was "strongly opposed to any such settlement." (Person aff. ¶ 51)

17. On November 26, 1974, there was a meeting of defense counsel held at our offices. The discussion at that meeting included an exchange of views with respect to this case. Such discussions among co-counsel involve frank exchanges of impressions, conclusions, legal theories, opinions

and factual matter. They are protected by the work product and other privileges, and we have no intention of waiving any such privileges by disclosing the substance of the November 26th meeting. But, as we have noted, even if it be assumed that GM's counsel told counsel for other defendants that GM is strongly opposed to settlement by them, there would be no impropriety and certainly no basis for granting plaintiffs any relief whatever.

The Celina Attachment

18. Plaintiffs' claim that GM is somehow responsible for The Celina Mutual Insurance Company attaching Nabcor's interest in any recovery in this action is entirely unsupported by any evidence in plaintiffs' moving papers. Nevertheless, Mr. Leary's affidavit shows that GM did no such thing.

The Bergelson Episode

19. It is difficult to see the relevance of plaintiffs' charges with respect to the Bergelson episode. The events in question are said by plaintiffs to have occurred in 1971-1972, and there is no suggestion that there is any continuing problem arising from those alleged events. Indeed, plaintiffs' counsel admitted as much at the January 20 conference. (Transcript, Jan. 20, 1975, p. 53) Thus, they can have no bearing on a motion for a preliminary injunction.

20. Nevertheless, we submit herewith an affidavit of Robert L. Berg, the GM executive discussed in plaintiffs' moving affidavit. Mr. Berg's affidavit demonstrates that plaintiffs' charges -- which appear to be based exclusively on speculation by plaintiffs' counsel -- are without any merit whatever.

The Alleged "Solicitation" of the Chicago Brokers

21. Plaintiffs make a variety of charges with respect to Mr. Kaplan's alleged "solicitation" of certain Nabcor brokers at a meeting in Chicago in 1971. (Person aff. ¶ 15). Submitted herewith are affidavits of A. J. Zenoff, Esq., the Chicago attorney who represented the Nabcor brokers in question, Sidney S. Rosdeitcher of this firm, and Mr. Kaplan, all of whom -- unlike plaintiffs' counsel -- were present at the meeting. They demonstrate that plaintiffs' charges are false.

22. I should also point out that the Chicago meeting took place, as the accompanying affidavits show, on October 11, 1971. Contrary to the implication in plaintiffs' papers, there was at that time no order in this case barring counsel from communicating with members of the alleged classes. Rule 23 contains no such restriction. There is no local rule in this Court barring such contacts. Hence Messrs. Rosdeitcher and Kaplan had every right to interview the Chicago brokers.

23. A few other points should be made with respect to Mr. Person's charges regarding the Chicago meeting:

(a) It was not until November 7, 1973 -- more than two years after the Chicago meeting -- that this court placed restrictions on contacts with members of the alleged classes pending the class determination. (Transcript, Nov. 7, 1973, pp. 58-59, 71-72) Mr. Person must be aware of that fact, and the charge that the Chicago meeting was improper therefore is disingenuous.

(b) Plaintiffs themselves contacted members of alleged classes before the class action determination. In opposing the 1973 motion of Niagara Falls Gazette Publishing Corp. for summary judgment, plaintiffs submitted an affidavit of Richard L. Owens, the principal of American Auto Brokers and a member of the alleged Nabcor broker class. National Auto Brokers Corp. v. General Motors Corp., 70 Civ. 5421A (unpublished memorandum dated Nov. 23, 1973). And in moving for a preliminary injunction in 1973, plaintiffs submitted an affidavit of William G. Kemp. (Filed in court Apr. 10, 1973, and entered on docket June 19, 1973) Mr. Kemp claimed to be a former GM dealer and therefore was a member of one of plaintiffs' alleged classes. (Person aff., Apr. 2, 1973, ¶ 8; see cpt. ¶ 167(b), p. 82) We point this out not because we suggest plaintiffs acted improperly in obtaining affidavits from alleged class members, but to show that Mr. Person knows very well that contacts with alleged class members -- whether by plaintiffs or defendants -- were entirely proper prior to November 7, 1973.

(c) As Mr. Zenoff's affidavit shows, some of these Chicago brokers had made claims against Nabcor at least as early as 1968. Indeed, Nabcor's interrogatory answers in this case show that these brokers sought to institute criminal proceedings against the Maiorana brothers and to recover funds from them before this action was instituted. (Attached as Exhibit 2 are copies of documents that are exhibits to Nabcor's answers to GM's first set of interrogatories, filed June 21, 1972.) For Mr. Person to charge that counsel for GM improperly tried to instigate a lawsuit against Nabcor by these brokers in October 1971 without disclosing that the same brokers had by then been making claims and seeking to initiate criminal proceedings against Nabcor for at least three years is less than completely candid.

The Discovery Request

24. Plaintiffs' papers contain requests for discovery relating to the defendants' discussions relating to settlement of this case and their investigation and preparation of this matter for trial. All of these requests are improper because they seek information that is irrelevant to the merits of this action and for other reasons. In order to avoid any possible claim of waiver, however, I state that GM objects to all of the requested discovery on the ground that it seeks information protected by the attorney-client privilege or contains work product, material prepared in anticipation of litigation, or any other privileged matter.

Some General Observations

25. Before concluding, it would perhaps be useful to consider a few general observations that this motion brings to mind.

This Motion Reveals This to be a Strike Suit

26. It is readily apparent that plaintiffs' papers

are largely a lament that most of the numerous defendants other than GM have refused to pay even nominal "settlements" to the plaintiffs. Plaintiffs seem to find it inconceivable that these other defendants would refuse to do so because, they argue, the cost of defending the action must far exceed the token amounts plaintiffs are willing to accept in "settlement". And so plaintiffs seek to draw two inferences: (a) the reason these other defendants will not settle is that GM must be paying their litigation expenses and indemnifying them against any loss in this action and (b) GM is doing so in order to keep these other defendants in the case and thereby to force plaintiffs to litigate against defendants that are not "real parties in interest".

27. The Court perceived at least one of the fallacies in this chain of "reasoning" when the matter first came before it on January 20. If litigating against the non-GM defendants is burdensome to plaintiffs, they can drop them from the action. (Transcript, Jan. 20, 1975, p. 34) But plaintiffs refuse to do so. (Ibid.) Since GM is able to satisfy any judgment, we submit that the most probable reason for keeping the other defendants in the case -- and for suing them in the first place -- is the hope of extorting "settlements" from them by making defense more expensive than surrender.

This Motion is Merely Another Tactic by Plaintiffs

28. Despite their recent statements that they are ready for an immediate trial, we submit that this motion raises serious questions about plaintiffs' desire to litigate this action on the merits rather than engaging in endless and ex-

pensive fencing on collateral issues in the hopes of obtaining "settlements" from defendants whose legal expenses might become excessive.

29. The peculiar timing of this motion calls to mind events of two years ago and suggests a preference for litigation on collateral matters.

30. In February 1973, GM noticed the deposition of Frank Maiorana to commence on March 12, 1973. On March 5, 1973, plaintiffs moved for a preliminary injunction, a motion on which they demanded and received a prompt hearing. The Court will recall that the bulk of that motion related to events that allegedly occurred long in the past and that it found the one then-recent claim -- that involving Colonial Cadillac -- to be baseless. (Transcript, Apr. 10, 1973, pp. 327-41a, especially 333 and 336) But that motion threatened to prevent the Maiorana deposition from going forward as scheduled and did result in its focusing heavily on Colonial Cadillac rather than on the matters alleged in the complaint.

31. This motion seems to be a repetition of the 1973 performance. On December 31, 1974, we again noticed Mr. Maiorana's deposition -- this time to begin on January 21, 1975. (A copy of the letter scheduling the deposition is annexed as Exhibit 3.) On or about January 10, 1975, plaintiffs again moved for a preliminary injunction. And again, with the exception of the allegations regarding settlement and related matters, the motion relates largely to events long past.*

---

* The alleged "solicitation" of Nabcor brokers in Chicago took place in 1971. (Person aff. ¶ 15) The alleged Mesirov incident was in 1972. (Person aff. ¶ 16) The alleged Bergelson episode was in 1971-1972. (Person aff. ¶¶ 17-29) The Celina attachment was in 1973. (Supplemental affidavit in opposition to class action motions, filed Dec. 21, 1973)

Moreover, on January 20, 1975, plaintiffs' counsel admitted to the Court that he had no evidence that much of the alleged conduct of which he complained is continuing. (Transcript, Jan. 20, 1975, pp. 32, 52-53) Hence, this motion seems to have been designed not so much to obtain urgently needed relief as to sidetrack this case on to an inquiry into years-old collateral questions.

32. If the interesting timing of the instant motion, and the parallel between this motion and the Colonial Cadillac motion, are coupled with other recent events in this action, there is still further reason to doubt plaintiffs' desire to litigate on the merits. Judgment should be suspended as to Frank Maiorana's alleged heart attack pending a medical report, but it is indeed interesting that the heart attack is said to have occurred in August 1974, that plaintiffs repeatedly offered to produce Mr. Maiorana to testify in December 1974 at a "good faith hearing", but that plaintiffs now claim he is too ill to be deposed. Perhaps there are, as plaintiffs claim, good reasons why they cannot produce their financial records, and perhaps Mr. Turco's dog did accidentally chew up a ledger containing records of Nabcor East's automobile transactions (Transcript, Jan. 20, 1975, pp. 22-23) -- but perhaps there are other reasons why these records are not turned over promptly and in good condition.

33. Another circumstance suggesting that this motion is merely a ploy is the lack of any colorable explanation of why plaintiffs need injunctive relief, even if all their assertions were true.* The only effort made to provide such an explanation is a brief discussion of Nabcor's poor financial con-

---

* This alone warrants summary denial of plaintiffs' motion. E.g., SCM Corp. v. Xerox Corp., 507 F.2d 358 (2d Cir. 1974).

dition coupled with a conclusory claim that GM's alleged tactics deprive Nabcor of the "economic wherewithal" to prosecute this action, apparently by requiring plaintiffs to expend their resources litigating against other defendants. (Person aff. ¶¶ 5-6, 9-10, 13, 72-73, 75, 77) But GM did not force Nabcor to conduct lengthy depositions of such defendants as First National City Bank and the Better Business Bureaus. And GM did not force Nabcor to bring a new action against the Better Business Bureaus. If plaintiffs are diverting their resources into channels other than pursuit of GM, it is by their own choice. Moreover, the claim that Nabcor is being forced to expend its energies by litigating against other defendants that are not, as they put it, "real parties in interest" is contradicted by plaintiffs' own papers. They claim that these other defendants "have taken virtually no steps whatever to . . . defend themselves in this action", that "almost none . . . have moved for a summary judgment, served interrogatories, served a notice to produce, served a request for admissions, or attended any of the numerous depositions. . . " (Person aff. ¶ 74) Plaintiffs simply cannot have it both ways.

34. We mention these matters only to make one point. In order properly to prepare for trial of this case, the defendants have a great deal of work left to do. For example, we have only recently received interrogatory answers identifying all the franchised automobile dealers whom plaintiffs claim refused to deal with them. The Colonial Cadillac motion of 1973, plaintiffs' long delay in responding to our interrogatories, and Mr. Maiorana's recent claimed heart attack, among other things, have prevented us from examining that key witness on the merits of this case for a long time, and there is much ground to cover. The delays in producing plaintiffs' financial

records leave our accountants with a great deal to do. And there is much more.

35. The temptation to put an end to this case by accepting plaintiffs' offer to go to trial at the earliest possible time is very great. Every day that passes with litigation focusing on such collateral matters as Mr. Maiorana's heart condition and this motion increases that temptation for everyone, as plaintiffs are probably quite aware. But a fair trial here for GM and for the other defendants requires that they be permitted to complete the necessary discovery before trial -- and plaintiffs should not be permitted to prevent, sidetrack, or shortcut that discovery by delay and by raising one collateral matter after another until everyone so tires of their tactics that the case is set down for trial, ready or not.

Conclusion

36. The reasons for denying this motion -- whether viewed as a motion for a preliminary injunction, a motion for partial summary judgment, or whatever -- are so numerous as to defy recapitulation, and we resist the temptation to try. Indeed, for that reason, and because the Court has requested that the papers submitted on this motion be kept to the barest minimum, we do not submit a memorandum of law and do not undertake an analysis of the legal issues that might be presented were there some factual support for plaintiffs' claims. We should state, however, that even if plaintiffs' allegations were true, we submit they would not be entitled to any relief here as a matter of law.

37. It should also be said that this motion has been an unwarranted imposition on both the Court and counsel. It should be denied in all respects, and the Court should take appropriate action to bring plaintiffs sharply to the realization

that the right to sue in the federal courts carries with it the responsibility to abstain from wasting the time and money of the Court and litigants alike by making frivolous and irresponsible motions and charges.

Martin Kleinbard
Martin Kleinbard

Subscribed and sworn to
before me this 10th day
of March, 1975

Alva Barone

ALVA BARONE
Notary Public, State of New York
No. 31-5189800
Qualified in New York County
Commission Expires [illegible] 30, 1976

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
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COUNSEL

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MARTIN KLEINBARD
RICHARD H. PAUL
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ROBERT L. LAUFER
ALLEN L. THOMAS
PETER L. FELCHER
MARK H. ALCOTT
JOHN P. MCENROE
PETER J. ROTHENBERG
DANIEL P. LEVITT *

* MEMBER D.C. BAR ONLY

WRITER'S DIRECT DIAL NUMBER

(212) 644-8184

November 11, 1974

To All Defense Counsel

National Auto Brokers Corp.
v. General Motors Corporation

Gentlemen:

It has come to our attention that plaintiffs have approached a number of the defendants in this action with settlement proposals and that in so doing they have indicated to some that settlement discussions have taken place between the plaintiffs and GM. The purpose of this letter is to inform you of the facts in this connection.

Last week plaintiffs' counsel approached us with an offer to settle this case which we regarded as outrageous and totally unacceptable. The offer was flatly rejected. There are no settlement discussions going on between the plaintiffs and GM and, apart from the plaintiffs' offer of last week, there have been none.

This would be an opportune time for defense counsel to meet to discuss future strategy for this case and, in the event any defendant wishes to discuss it, the desirability of a joint settlement proposal. We would be happy to host such a meeting at our offices on November 26, 1974 at 11:00 a.m. and would appreciate your letting us know whether you will attend so that we may reserve adequate space.

Very truly yours,

Martin Kleinbard
Martin Kleinbard

Exhibit 1

:S 4380

Abe [illegible]
53 W Jackson
Chicago
922-5615

OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

EDWARD V. HANRAHAN
STATE'S ATTORNEY

1121 SOUTH STATE STREET
CHICAGO, ILLINOIS 60605
PHONE HARRISON 7-0923

File No. 690254

Continued to
Mar 10 1970

Re: Claude Flanagan
COMPLAINING WITNESS

Vs.

Frank Mariano.
RESPONDENT

Dear Sir.

This office has been requested to recommend that a warrant issue for your arrest.

A hearing on this complaint is set for:

Jan. 30, 1970, at 2:00 P. M. in Room 702, Central Police and Courts Building, 1121 South State Street, Chicago, Illinois, to give you an opportunity to appear and show cause why a warrant should not issue.

Very truly yours,

EDWARD V. HANRAHAN
State's Attorney

By Gene Milone. /R.L.
Assistant State's Attorney
Telephone: Harrison 7-0923

#2

Exhibit 2, Page 1

DCS 4380

OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

EDWARD V. HANRAHAN
STATE'S ATTORNEY

1121 SOUTH STATE STREET
CHICAGO, ILLINOIS 60605
PHONE HARRISON 7-0923

File No. 650254

Re: Claude Flanagan.
COMPLAINING WITNESS

Vs.

Jack Snyder.
RESPONDENT

Dear Sir.

This office has been requested to recommend that a warrant issue for your arrest.

A hearing on this complaint is set for:

Jan. 30, 1970, at 2:00 P. M. in Room 702, Central Police and Courts Building, 1121 South State Street, Chicago, Illinois, to give you an opportunity to appear and show cause why a warrant should not issue.

Very truly yours,

EDWARD V. HANRAHAN
State's Attorney

By Gene Milens. /B.L.
Assistant State's Attorney
Telephone: Harrison 7-0923

#2

LAW OFFICES
ZENOFF, WESTLER, JONES & KAMM

A. J. ZENOFF
MURRAY WESTLER
CHRISTOPHER E. JONES
ROBERT H. KAMM

JEROLD JAY SHAPIRO

53 WEST JACKSON BOULEVARD, SUITE 744
CHICAGO, ILLINOIS 60604
TELEPHONE 922-5685

JOHN F. McCARTHY
COUNSEL

January 30, 1970

Messrs. Frank Mariano,
Anthony Mariano, Jack Snyder
Nabcor, Inc.
101 Benson Manor
Township Line & Old York Road
Jenkintown, Pennsylvania

Gentlemen:

The State's Attorney's office of Cook County advises me that some one called from your offices and requested a continuance from the January 30th hearing date, giving as his reason that my client's down payment would be refunded through my offices.

I have never heard from anyone and I am herewith advising you that unless Claude Flanagan's refund of deposit in the amount of $707.90 plus $200.00 attorney's fees is promptly made to these offices, we will insist upon a warrant at the next hearing date.

Very truly yours,

A J Zenoff

A. J. Zenoff

AJZ:ms

LAW OFFICES
ZENOFF, WESTLER, JONES & KAMM

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MURRAY WESTLER
CHRISTOPHER E. JONES
ROBERT M. KAMM

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CHICAGO, ILLINOIS 60603
FRANKLIN 2-5700

NEW ADDRESS:
53 W. JACKSON BLVD., SUITE 744
CHICAGO, ILL. 60604
PH.: 922-5605

COPY

February 20, 1970

Mr. Gene Wilens, Assistant State's Attorney
1121 South State Street
Chicago, Illinois

Re: Claude Flanagan -v- Frank Mariano,
Anthony Mariano, Jack Snyder
No. 690254

Dear Mr. Wilens:

The respondents named above have made no effort to contact this office regarding Mr. Flanagan's claim.

Your office has advised that the hearing is set for 2 P.M. on March 10, 1970. I shall have my client present in your office on that date and we shall be prepared to sign a formal complaint for a warrant, of course, upon the condition that your office so consents.

Very truly yours,

A. J. Zenoff

AJZ/msk
Air Mail to
cc: Messrs. Frank Mariano,
Anthony Mariano

cc: Mr. Claude Flanagan

COPY

LAW OFFICES
ZENOFF, WESTLER, JONES & KAMM

A. J. ZENOFF
MURRAY WESTLER
CHRISTOPHER E. JONES
ROBERT M. KAMM

110 SOUTH DEARBORN STREET-SUITE 820
CHICAGO, ILLINOIS 60603
FRANKLIN 2-5700

NEW ADDRESS:
53 W. JACKSON BLVD., SUITE 744
CHICAGO, ILL. 60604
PH.: 922-5685

AIR MAIL - SPEC. DEL.

March 18, 1970

Mr. James Tracey
Attorney at Law
2063 Suburban Station Building
Philadelphia, Pennsylvania

Re: Claude Flanagan
vs.
Nabcor, Inc.

Dear Mr. Tracey:

On March 9, 1970, I sent a form of release to you for your approval. It was to be signed by Claude Flanagan.

I have had no response from you. I now hold the original executed copy of this letter release, and I am awaiting word from you as to how you want this handled.

Very truly yours,

A. J. Zenoff

AJZ/hp
Enclosure.

cc: Honorable Eugene Willens
Assistant States Attorney
of Cook County
Police Court Building
11th & State Streets
Chicago, Illinois

cc: Messrs. Frank Mariano, Anthony
Mariano, Jack Snyder
Nabcor, Inc.
101 Benson Manor
Township Line & Old York Road
Jenkintown, Pennsylvania

DCS 4381

OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

EDWARD V. HANRAHAN
STATE'S ATTORNEY

1121 SOUTH STATE STREET
CHICAGO, ILLINOIS 60605
PHONE HA RRISON 7-0923

March 24, 1970

File No. 69254

Re: Claude Flanagan
COMPLAINING WITNESS

Vs.

Frank and Anthony Mariano
RESPONDENT Jack Snyder

Dear Sirs:

This is to advise you that the above entitled matter has been continued to:

Tuesday, March 31, 1970 19____, at 2:00 P.M. M.
Room 702, 1121 S. State Street, Chicago, Illinois.

Kindly arrange to be present at that time.

Final Continuance.

Very truly yours,

EDWARD V. HANRAHAN
State's Attorney

By M Gene Wilens/md
Assistant State's Attorney

#3

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 PARK AVENUE
NEW YORK, N.Y. 10022
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COUNSEL

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JAMES B. LEWIS
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MARTIN KLEINBARD
RICHARD H. PAUL
NORMAN ZELENKO
JOHN F. [illegible]
JAY H. TOPKIS
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SEYMOUR HERTZ
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ALLEN L. THOMAS
PETER L. FELCHER
MARK H. ALCOTT
JOHN P. MCENROE
PETER J. ROTHENBERG
DANIEL P. LEVITT *

* MEMBER D.C. BAR ONLY

WRITER'S DIRECT DIAL NUMBER
644-8646

December 31, 1974

Carl E. Person, Esq.
132 Nassau Street
New York, N. Y.

National Auto Brokers Corp.
v. General Motors

Dear Carl:

This will serve as notice that we will continue the depositions of the plaintiffs at our offices at 10:00 A.M. on the dates indicated on the schedule attached to this letter.

This letter will also serve to remind you that plaintiffs are delinquent in responding to our last set of interrogatories, which was dated September 16, 1974. First, none of the plaintiffs, other than Nabcor and the Maiorana brothers, - have served any responses whatever. Second, you have not yet supplied the information which the Judge directed be supplied at the last pre-trial conference. Among other things, you undertook on that occasion to compare the police books with such other information as you may have and list any transactions engaged in by Nabcor and Nabcor East that are not in the police books. You agreed to do so by December 27, 1974, and we have not as yet received that information. As I am sure you understand, we will not necessarily be able to complete the depositions of the plaintiffs until we have complete responses to the interrogatories, as well as our accountants' report on your clients' books.

Also enclosed is a new set of interrogatories containing questions which we told the Judge we would reframe.

Best wishes for the New Year.

Sincerely,

Lewis A. Kaplan

LAK:ra
Enclosures

cc: All counsel

Exhibit 3, Page 1

SCHEDULE

Person to be Deposed	Party	Date
Frank Maiorana	National Auto Brokers Corp. Frank Maiorana	January 21, 22, 23, 24 and 27 February 19, 20, 21, 1975
Anthony Maiorana	National Auto Brokers Corp. Anthony Maiorana	February 25, 26 and 27, 1975
Dale Strimpel	General Auto Sales & Leasing, Inc. Dale Strimpel	March 4, 1975
John Dougal	Courtesy Auto Brokers	March 10, 1975
Rita Maiorana	National Auto Brokers Corp.	March 11, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, : 70 Civ. 5421A (TPG)

v. : AFFIDAVIT

GENERAL MOTORS CORPORATION, et al., :

Defendants.

- x

STATE OF MICHIGAN)
) ss.:
COUNTY OF WAYNE)

THOMAS B. LEARY, being duly sworn, says:

1. I am a member of the Bar of the States of New York and Michigan and attorney-in-charge, antitrust section, on the Legal Staff of General Motors Corporation ("GM"). I am the GM attorney responsible for the conduct of this litigation on behalf of GM. I am fully familiar with GM's policies and practices concerning this case and I make this affidavit in opposition to plaintiffs' motion for a preliminary injunction and other relief on the basis of the knowledge and information which I have gained in that capacity.

2. GM has not paid or agreed to pay any of the legal fees or other costs incurred in connection with this action for or on behalf of any of the defendants other than GM, General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche (hereinafter collectively "the GM defendants").

3. GM has not indemnified or agreed to indemnify any of the defendants in this action against any judgment, losses or other expenses which may be incurred by them in connection with this action, except that the GM defendants may be indemnified under the By-Laws of the Corporation or Delaware law.

4. GM has not agreed to post or guaranty a supersedeas bond, or pay the premium for such a bond, for any of the defendants in this action.

5. GM's position is that any defendant in this action is free to do as it chooses with respect to settlement, and GM has not threatened, coerced, or otherwise improperly sought to prevent any defendant in this action from reaching a settlement with the plaintiffs. Indeed, plaintiffs' contrary suggestion is belied by the fact that the five defendants which their papers state have settled are all GM dealers. As Mr. Kleinbard has indicated, however, GM does have the right to express its views with respect to the advisability or desirability of any proposed action that might affect this litigation, including settlement.

6. GM has not solicited or assisted The Celina Mutual Insurance Company to attach Nabcor's interest in this action.

Thomas B. Leary
Thomas B. Leary

Sworn to before me this
~~24~~25th day of February 1975.

Margaret M. Doran
Notary Public

MARGARET M. DORAN
Notary Public, Oakland County, Michigan
[illegible]
My Commission Expires [illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

NATIONAL AUTO BROKERS CORP., et al.,
:
Plaintiffs,   70 Civ. 5421A (TPG)

v.   :   **AFFIDAVIT**

GENERAL MOTORS CORPORATION, et al.,
:
Defendants.

- x

STATE OF MICHIGAN)
) ss.:
COUNTY OF WAYNE)

ROBERT L. BERG, being duly sworn, says:

1. I am director of fleet sales for the Chevrolet Motor Division of General Motors Corporation ("GM") and have held that position since July 1969. I make this affidavit in opposition to plaintiffs' motion for a preliminary injunction and other relief.

2. I am advised by counsel that plaintiffs allege that GM conspired with one Victor Bergelson to take control of Nabcor away from Frank Maiorana for the purpose of discontinuing this action, to remove records and filing cabinets from Nabcor's office by armed robbery and to grant credit by General Motors Acceptance Corporation ("GMAC") to a firm with which Mr. Bergelson was connected in consideration of an offer by Mr. Bergelson to obtain control of Nabcor and discontinue this action. I understand further that plaintiffs suggest that I was implicated in this alleged conspiracy.

3. Plaintiffs' charges are entirely groundless.

4. Neither I nor, as far as I know, anyone else connected with GM or GMAC took any steps to assist Mr. Bergelson in obtaining control of Nabcor for any purpose.

5. Neither I nor, as far as I know, anyone else connected with GM or GMAC had any connection whatever with the alleged robbery of Nabcor's offices.

6. In March 1972, I approved with others, on behalf of Chevrolet, a sixty-day extension of monthly principal payments due on automobiles owned by Carz, Inc., an Ohio car rental company with which I understand Mr. Bergelson was connected. I did so for normal business reasons--among them the desire to avoid, if possible, the collapse of Carz, Inc., which was a large buyer of Chevrolets--and not in consideration of any offer by Mr. Bergelson to obtain or seek to obtain control of Nabcor and to discontinue this action.

Robert L. Berg

Sworn to before me this
~~24~~25th day of February 1975.

Notary Public

[illegible] Macomb County, Michigan
Acting in Wayne County, Michigan
My commission expires August [illegible], 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

---------------------------------------x

70 Civ. 5421A (TPG)

AFFIDAVIT

STATE OF ILLINOIS)
: ss.:
COUNTY OF COOK)

A. J. ZENOFF, being duly sworn, says:

1. I am a member of the Illinois bar and a member of the firm of Zenoff, Westler, Jones & Kamm. & Shapiro.

2. In or about the period 1968 through 1972 I represented a number of clients who had purchased franchises from National Auto Brokers Corp. ("Nabcor"). In 1968, on behalf of some of these clients, I made complaints against Nabcor to the U.S. Postal Inspectors and to the office of the Illinois State's Attorney.

3. On October 11, 1971, there was a meeting in my office attended by Sidney S. Rosdeitcher and Lewis A. Kaplan, of Paul, Weiss, Rifkind, Wharton & Garrison, a number of my clients who had previously bought interests in Nabcor franchises, and myself.

4. I understand that it is alleged that Mr. Kaplan "solicited" my clients. In fact, the meeting came about as a result of an approach by me to General Motors Acceptance Corporation.

5. In early 1971 one of my clients called my attention to a newspaper clipping reporting on the commencement of Nabcor's action against GM. I subsequently wrote to GMAC referring to my clients' experiences with Nabcor and offering our assistance to GM's attorneys. (A copy of my letter is attached as Exhibit 1).

6. Some time later Mr. Kaplan got in touch with me, advised me that my letter had been referred to him, and requested an opportunity to interview my clients. That interview took place at the meeting of October 11, 1971.

7. I am also advised that it is alleged that Mr. Kaplan encouraged my clients to bring an action against Nabcor, offered to give them support in any such suit, and attempted to persuade them from becoming members of the plaintiff class in Nabcor's action against GM.

8. Those charges are not consistent with the facts. As far as I am aware, the October 11, 1971 meeting was the only occasion on which either Mr. Rosdeitcher or Mr. Kaplan communicated with any of my clients, and I was present throughout that meeting. At that meeting, Messrs. Rosdeitcher and Kaplan did nothing other than try to find out about my clients' experiences with Nabcor. Neither encouraged my clients to bring an action against Nabcor. Neither attempted to persuade them from becoming members of the plaintiff class in Nabcor's action against GM.

9. During the course of the meeting, I specifically asked Mr. Rosdeitcher what benefit my clients might gain from cooperating with GM's attorneys. He responded that all he

could offer was to make available to me information relating to Nabcor that GM might gather in the defense of Nabcor's action against GM. Neither Mr. Rosdeitcher nor Mr. Kaplan offered to give my clients any support in any actions they might bring against Nabcor, and the offer of information was the only offer of assistance that they made.

10. Subsequent to the meeting the only materials relating to Nabcor that I ever received from GM's counsel were letters dated October 15, October 18 and December 10, 1971, together with a list of lawsuits brought against Nabcor by other Nabcor brokers (which I had requested), a copy of a transcript of a deposition of Frank Maiorana and a magazine clipping relating to government regulation of franchises. (A copy of the October 15, 1971 letter is included in Exhibit B to plaintiffs' papers. Copies of the October 18 and December 10 letters are attached hereto as Exhibits 2 and 3.)

11. Between January 1972 and January 1975 neither I nor, as far as I know, any of my clients have had any communications relating to Nabcor with GM or its attorneys.

12. I might add that as far as I am aware, none of my clients ever brought a civil action against Nabcor, although as noted, long prior to the institution of Nabcor's action against GM I had made complaints against Nabcor on behalf of some of my clients to the U.S. Post Office Department and to the Illinois State's Attorney.

S J Zenoff

J Zenoff

Sworn to before me this

4th day of February, 1975

Notary Public

LAW OFFICES
ZENOFF, [illegible], [illegible] & KAMM

A. J. ZENOFF
MURRAY W[illegible]
CHRISTOPHER E. JONES
ROBERT H. KAMM
JEROLD JAY SHAPIRO

53 W[illegible] JACKSON [illegible]
CHICAGO, ILLINOIS 60604
TELEPHONE 922-[illegible]

JOHN J. McCARTHY
COUNSEL

RECEIVED
MAY 6 1971
A. S. BRUSH

1830

May 5, 1971

Mr. A. S. Brush, Vice President
General Motors Acceptance Corporation
General Motors Building
767 Fifth Avenue
New York, New York 10022

Dear Mr. Brush:

You will recall that I, not too long ago, appeared in your offices with Tom Sullivan on behalf of the LaSalle National Bank in connection with the Tetra matter.

I enclose a copy of an article that appeared in the December 14, 1970 issue of the Wall Street Journal relative to litigation against General Motors Corporation and others by National Auto Brokers and others as plaintiffs.

I represent a group of people in the Chicago area who invested substantial monies with the Jenkintown people for franchises. I feel that my people were high pressured and were sold "bags of wind". I only mention this to you because I, as well as my clients, would be pleased to be of some help to General Motors' attorneys, if they feel it is needed.

I have felt so strongly about this that I referred our facts to the Postal Inspectors some time ago. However, nothing has been heard from the U.S. authorities as yet. If you feel I may be of help, please refer my letter to the appropriate people.

I still haven't forgotten your generous and kind courtesy to Tom and myself while we spent the long hours in your good offices.

Cordially,

A. J. Zenoff

AJZ/ask
Enclosure
Air Mail

10

Wall Street Journal
12/14/70

A 1831

Millions in Damages Are Sought by Group Of Discount Car Sellers

National Auto Brokers, Franchised Firms Name Auto Companies And 73 Others as Defendants

By a WALL STREET JOURNAL *Staff Reporter*

NEW YORK—A group of independent discount sellers of new autos has filed suit seeking hundreds of millions of dollars in damages from auto companies and 73 other defendants, including car dealers, finance companies, newspapers and Better Business Bureaus.

The 111-page complaint, filed in Federal District Court, Southern District of New York, alleges conspiracy or combination to restrain trade or to monopolize the sale of new cars in violation of antitrust laws.

A principal plaintiff is National Auto Brokers Corp., a Jenkintown, Pa., concern that has been selling "any make or model" of General Motors Corp., Ford Motor Co., Chrysler Corp. and American Motors Corp. cars at "discount retail prices" since 1966.

Six other concerns that presently or formerly served as National Auto's franchised brokers in the discount auto business also are plaintiffs in the action. They include: Courtesy Auto Brokers, Huntington Station, N.Y.; Lancaster, N.Y.-based General Auto Sales & Leasing Inc., which ceased operations in July this year; Bethlehem, Pa.-based Robert Heim Auto Sales, which ceased operations in March this year; Lou's Auto Mart in Middlebury and Waterbury, Conn; Nabcor of East New York Inc., Yonkers, N.Y., and A. J. Young Sr. Auto Sales, Watertown, N.Y.

Listed as defendants were all four U.S. major auto producers; certain of their dealers; 11 banks and consumer finance companies; four Better Business Bureaus; and 15 newspaper publishing companies, including Dow Jones & Co.

The complaint charges that defendants and co-conspirators coerced franchised auto dealers "not to continue supplying" new autos to National Auto (referred to as "Nabcor"); coerced newspapers to refuse Nabcor advertising; coerced financial institutions to deny financing to Nabcor, and requested Better Business Bureaus to "issue libelous, false and misleading reports and publications about Nabcor."

Officials of the four auto makers named in the suit declined comment.

Dow Jones said it hadn't received the complaint and was unable to comment.

There are 27 counts in the complaint alleging violations of Sherman and Clayton antitrust laws. The first three counts claim damages exceeding $100 million for which plaintiffs seek triple damage relief. In another example, counts five through seven seek triple damages for alleged damages totaling more than $50 million.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 PARK AVENUE
NEW YORK, N.Y. 10022

WRITER'S DIRECT DIAL NUMBER
12) 935-0646

October 18, 1971

A. J. Zenoff, Esq.
Zenoff, Jones, Kamm & Westler
53 West Jackson Boulevard
Chicago, Illinois

Nabcor

Dear Mr. Zenoff:

I enclose herewith, denominated as Schedule A, a list of Nabcor franchise litigation of which we are aware, which was inadvertently omitted from my recent letter to you.

Sincerely,

Lewis A. Kaplan

LAK/azv
Enclosure

COPY

SCHEDULE A

Nabcor Franchise Litigation

	Action	Court	Attorney for Plaintiff
.	Al Skinner Auto 1/ Sales v. Nabcor	New York Supreme Court Nassau County	Leon Malman 6 Grace Avenue Great Neck, N.Y. 11021
.	Covello v. Nabcor 2/	Pennsylvania Common Pleas Montgomery County	Milton O. Moss Moss, Rounick & Hurowitz 68-70 East Penn Street Norristown, Pa. 19401
3.	Losty v. Nabcor	Pennsylvania Common Pleas Montgomery County	Edward F. Kane Kane, DeAngelis, Kaufman & Gianguilio 522 Swede Street Norristown, Pa. 19401
.	Piper v. Nabcor	Pennsylvania Common Pleas Philadelphia County	Jack E. Levin Donsky, Katz, Levin & Bashman Land Title Building Philadelphia, Pa.
.	Mesirov and Gerson v. Nabcor 3/	Pennsylvania Common Pleas Montgomery County	Henry Stein Mesirov, Gelman, Jaffe & Levin The Fidelity Building Philadelphia, Pa. 19109
.	Hetrick v. Nabcor	Pennsylvania Common Pleas Montgomery County	Gary Kleitman Fox and Fox 523 Swede Street Norristown, Pa. 19401
7.	Tannebaum v. Nabcor	Pennsylvania Common Pleas Montgomery County (67-15844)	Unknown

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1/ This case has resulted in a judgment for the plaintiff entered in 1969. An appeal was noticed to the Appellate Division of the Supreme Court for the Second Department. We are unaware of any further progress in the case.

2/ Mr. Moss, in addition to representing Mr. Covello, is District Attorney for Montgomery County, Pennsylvania, which includes Jenkintown, the city in which Nabcor is located.

3/ Mr. Stein represents a third franchisee on whose behalf an action has not yet been instituted.

10/13/71

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 PARK AVENUE NEW YORK, N.Y. 10022

A 1834

DIRECT DIAL NUMBER

935-[illegible]646

December 10, 1971

A.J. Zenoff, Esq.
Zenoff, Westler, Jones & Kamm
53 West Jackson Blvd. Suite 744
Chicago, Illinois 60604

Nabcor

Dear Mr. Zenoff:

I thought you would be interested in the enclosed clipping from the current Business Week. It reports on a new release issued by the SEC which indicates that sub-franchising operations such as Nabcor involve the sale of securities within the meaning of the Securities Act of 1933. In view of your clients' position as an area distributor with sub-franchising rights, it would appear possible that this release, together with pre-existing case law, may give them a broad range of remedies under the various securities acts.

Now that your clients have had an opportunity to consider their position following our meeting in October, I wonder if it might be profitable for us to meet again and further discuss their experiences with Nabcor.

Cordially,

Lewis A. Kaplan

LAK:tab
Enclosure

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

--x

70 Civ. 5421A (TPG)

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SIDNEY S. ROSDEITCHER, being duly sworn, says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys in this action for defendants General Motors Corporation, General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche.

2. Plaintiffs' motion for a preliminary injunction and other relief, dated January 8, 1975, makes various charges relating to a meeting held on October 11, 1971 with a group of Nabcor franchisees (hereinafter referred to as the "Chicago brokers") and their attorney, A. J. Zenoff. Among other things, the moving papers assert that Mr. Kaplan of this firm "solicited" the Chicago brokers, urged them to bring an action against Nabcor and attempted to persuade them from becoming members of a class Nabcor was then trying to represent in this action.

3. On October 11, 1971, Mr. Kaplan of this firm and I met with a number of the Chicago brokers in Mr. Zenoff's

office. The meeting took place as a result of the offer of assistance to GM made in Mr. Zenoff's earlier letter; thus the initial overture was taken by Mr. Zenoff, not this law firm. (Zenoff aff., ex. 1) Mr. Zenoff was present throughout that meeting, during which Mr. Kaplan and I interviewed those present with respect to matters we regarded as relevant to this action. At one point, Mr. Zenoff asked what his clients stood to gain from cooperating with us, and I responded in substance that the only thing we could offer was to make available to Mr. Zenoff information about Nabcor that we might gather in the defense of this case. At no time during the meeting -- which was the only occasion on which I communicated with any of Mr. Zenoff's clients -- did Mr. Kaplan or I urge or request the Chicago brokers to bring an action against Nabcor, offer them support in any such action, or attempt to persuade them not to become members of any plaintiff class in this case.

4. Mr. Kaplan and I merely interviewed -- in the presence of their attorney -- potential witnesses who came to us with an unsolicited offer of assistance and offered to make available to their attorney relevant information concerning Nabcor which we might gather.

5. I have read the affidavit of A. J. Zenoff which is submitted herewith. To the best of my knowledge and recollection, that affidavit is accurate in all respects.

Sidney S. Rosdeitcher

Sworn to before me this
10th day of March, 1975.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, : 70 Civ. 5421A (TPG)

-against- : AFFIDAVIT

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

--x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LEWIS A. KAPLAN, being duly sworn, says:

1. I am an attorney associated with Paul, Weiss, Rifkind, Wharton & Garrison, attorneys in this action for defendants General Motors Corporation ("GM"), General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche. I make this affidavit in opposition to plaintiffs' motion for a preliminary injunction and other relief.

2. Plaintiffs' motion for a preliminary injunction and other relief, dated January 8, 1975, makes various charges relating to alleged contacts by me in 1971 with a group of Nabcor franchisees represented by a Chicago attorney, A. J. Zenoff. (These franchisees are hereinafter referred to as the "Chicago brokers".) Among other things, the moving papers assert that I "solicited" the Chicago brokers, urged them to bring an action against Nabcor, and tried to persuade them from becoming members of the class Nabcor was then trying to represent in this action.

3. On October 11, 1971, Mr. Rosdeitcher of this firm and I met with a number of the Chicago brokers in Mr. Zenoff's office. The meeting took place as a result of the offer of assistance to GM made in Mr. Zenoff's earlier letter; thus the initial overture was taken by Mr. Zenoff, not this law firm. (Zenoff aff., ex. 1) Mr. Zenoff was present throughout that meeting, during which Mr. Rosdeitcher and I interviewed those present with respect to matters we regarded as relevant to this action. At one point, Mr. Zenoff asked what his clients stood to gain from cooperating with us, and Mr. Rosdeitcher responded in substance that the only thing he could offer was to make available to Mr. Zenoff information about Nabcor that we might gather in the defense of this case. At no time during the meeting -- which was the only occasion on which I communicated with any of Mr. Zenoff's clients -- did Mr. Rosdeitcher or I urge or request the Chicago brokers to bring an action against Nabcor, offer them support in any such action, or attempt to persuade them not to become members of any plaintiff class in this case.

4. Mr. Rosdeitcher and I merely interviewed -- in the presence of their attorney -- potential witnesses who came to us with an unsolicited offer of assistance and offered to make available to their attorney relevant information concerning Nabcor which we might gather.

5. I have read the affidavit of A. J. Zenoff which is submitted herewith. To the best of my knowledge and recollection, that affidavit is accurate in all respects.

6. Paragraph 16 of the moving affidavit states that Richard Mesirov -- a Nabcor franchisee who sued Nabcor for

fraud, among other things, in early 1970* and who was deposed in this action on September 29, 1972 -- "testified in substance" at his deposition that I "advised Mr. Mesirov that he had no valid claims against GM as a Nabcor franchisee." (Emphasis added)

7. While it is difficult to see the relevance of plaintiffs' charge, it is not accurate in any event. I spoke with Mr. Mesirov only twice before he was deposed: once when I interviewed him in his lawyer's office and again briefly just before his deposition. On neither occasion did I advise him that he had no valid claim against GM as a Nabcor franchisee. Moreover, the transcript of the Mesirov deposition is on file in this Court and it does not support plaintiffs' claim.

Lewis A. Kaplan

Sworn to before me this
11th day of March, 1975.

Notary Public

CHARLES BROWN
Notary Public, State of New York
No. 43-4443000
Qualified in Richmond County
Certificates Filed with Richmond
and N. Y. County Clerks
Commission Expires March 30, 1975

---

* A copy of the complaint is annexed as exhibit 9 to GM's affidavit in opposition to plaintiffs' class action motions, filed June 29, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

NATIONAL AUTO BROKERS CORP., et al., :

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

---x

70 Civ. 5421A (TPG)

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ALLYNE R. ROSS, being duly sworn, says:

1. I am an attorney associated with the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys in this action for General Motors Corporation, General Motors Acceptance Corporation, Frederic G. Donner and James M. Roche. I make this affidavit in opposition to plaintiffs' motion for a preliminary injunction and for other relief.

2. I accompanied Lewis A. Kaplan of this office when we interviewed Richard Mesirov in his lawyer's office and again on September 29, 1972 when we spoke to Mr. Mesirov briefly before conducting his deposition.

3. On neither occasion did Mr. Kaplan advise Mr. Mesirov that he had no valid claim against GM as a Nabcor franchisee.

Allyne R. Ross
Allyne R. Ross

Sworn to before me this
18th day of February 1975

Sylvia Velazquez
Notary Public

SYLVIA VELAZQUEZ
Notary Public, State of New York
No. 03-3467633
Qualified in Bronx County
Term Expires March 30, 197

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Person Supplemental Aff't

- -x

NATIONAL AUTO BROKERS CORP., et al.,	:	70 Civ. 5421A (TPG)
Plaintiffs,	:	SUPPLEMENTAL AFFIDAVIT IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION, A PARTIAL SUMMARY JUDGMENT AND OTHER RELIEF
-against-	:	
GENERAL MOTORS CORPORATION, et al.,	:	
Defendants.	:	

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being first duly sworn, does hereby depose and say:

1. I am counsel for plaintiffs, am fully aware of all facts and all prior proceedings had in this action, and make this supplemental affidavit in further support of plaintiffs' motion for a preliminary injunction, a partial summary judgment and other relief.

2. In their answering affidavits, defendants GM, GMAC, Donner and Roche (the "GM Defendants") and their counsel, Messrs. Paul, Weiss, Rifkind, Wharton & Garrison, have taken an ostrich position - with their heads in the sand, pretending no motion was made. The GM Defendants have decided not to prepare or serve a memorandum of law, in spite of the Court's direction on January 24, 1975 to serve an answering memorandum of law. Also, the GM Defendants and their counsel have failed to respond (other than by blanket general denial) to most of plaintiffs' charges.

3. Furthermore, when the GM Defendants and their counsel did respond most vigorously (relating to the issue of encouragement or solicitation of Nabcor franchisees in the Chicago area to sue Nabcor), they failed to present the facts as those facts were viewed by the Nabcor franchisees themselves. The answering affidavits of Messrs. Zeneff, Rosdeitcher and Kaplan are just not true in this respect. See the accompanying affidavits of Nabcor franchisees Alfred H. Moore and C. David Rose, both of whom were at the meeting on October 11, 1971.

4. The answering [illegible] aspect of the October 11th meeting in Chicago. The copies of correspondence relating to the meeting annexed as Exhibit B to my affidavit sworn to January 8, 1975 seem to indicate that only four Nabcor franchisees were at the meeting: Claude Flanagan, Alfred H. Moore, Donald Kurtz and David Rose (see letter to Mr. Kaplan from Mr. Zenoff dated September 22, 1971). After interviewing various Nabcor franchisees during March 14-16, 1975, I have ascertained that the following Nabcor franchisees (8 or 9 in all) attended the meeting: Claude Flanagan, Alfred H. Moore, Donald Kurtz, C. David Rose, Claude Flanagan, Willie D. Watson, Randall Lewis, Luke A. Austin and Philbert Wilcox. I have not been able to learn whether or not Robert Myers attended the meeting. The answering affidavits should not have allowed this prior misunderstanding on my part to go without correction. Messrs. Zenoff, Rosdeitcher and Kaplan were at the meeting and knew full well how many Nabcor franchisees were at the meeting.

5. Another point has to be made. The answering affidavits refer to these Nabcor franchisees in attendance at the meeting as clients of Mr. Zenoff. Actually, this was not true as to all of the Nabcor franchisees in attendance. See the affidavit of Mr. Rose, who denies that Mr. Zenoff was acting as his attorney. Also, see the affidavit of Mr. Moore, who states that he retained Mr. Zenoff to represent him in bringing an action against Nabcor in 1968, which Mr. Zenoff failed to do. It appears that Mr. Zenoff was doing no more than seeking to re-establish the attorney-client relationship with Mr. Moore. See Exhibit B to my affidavit sworn to January 8, 1975, the copy of the letter from Mr. Zenoff to Mr. Moore and 3 others, dated November 11, 1975, in which Mr. Zenoff asks "as to whether or not you care to proceed, so that we can get our lawsuit prepared". It would seem that the prior "representation" of Mr. Moore had lapsed or was not even recalled by Mr. Zenoff. It seems, therefore, that at least as to Messrs. Rose and Kurtz (partners in Nucar Mart) and possibly as to Mr. Moore, Mr. Zenoff was not in fact functioning as their attorney, contrary to the affidavits of Messrs. Zenoff, Kleinbard, Rosdeitcher and Kaplan.

6. As a result of my discussions with 9 Nabcor franchisees during March 14-16, 1975, I have learned that the meeting of October 11, 1971 was set up to determine whether or not the Nabcor franchisees as a group should bring suit against Nabcor. These persons went to the meeting not for what they could do for GM or GM's attorneys, but to see in what ways the GM attorneys (Messrs. Kaplan and Rosdeitcher) could be of help to them in their contemplated suit against Nabcor. Mr. Rosdeitcher, in his affidávit, said that he told them "the only thing we could offer was to make available to Mr. Zenoff information about Nabcor that we might gather in the defense of this case". One week later, Mr. Kaplan sent Mr. Zenoff a Schedule of Nabcor franchise litigation (see Exhibit 2 to the Zenoff affidavit), including the gratuitous statement that one of the franchisees' attorneys (Mr. Moss) "is District Attorney for Montgomery County, Pennsylvania, which includes Jenkintown, the city in which Nabcor is located." This is a clear-cut suggestion to use the criminal process against Nabcor. The only thing Mr. Kaplan left out was Mr. Moss' telephone number. He did supply Mr. Moss' address. Also, on December 10, 1971, Mr. Kaplan enclosed an article from Business Week, then current edition, stating that the article

> "indicates that sub-franchising operations such as Nabcor involve the sale of securities within the meaning of the Securities Act of 1933. In view of your clients' position as an area distributor with sub-franchising rights, it would apear possible that this release, together with pre-existing case law, may give them a broad range of remedies under the various securities acts."

Mr. Kaplan went far above and beyond the call of duty when he sent this letter. This was hardly information gathered by Mr. Kaplan in defense of the Nabcor suit against GM, unless Mr. Kaplan considers his defense includes obtaining Nabcor franchisees to bring suits and criminal proceedings against Nabcor, which seems to be exactly what happened. At least the Nabcor franchisees I spoke with who attended the meeting (except one, who wants to see his lawyer before speaking with me) see the role of Messrs. Kaplan and Rosdeitcher as giving them encouragement in their contemplated suit against Nabcor and making them feel that the GM attorneys would be pleased if they brought an action against Nabcor.

7. The information set forth in ¶ 6 above was obtained through my discussions with the following 9 Nabcor franchisees: Donald R. Kurtz, C. David Rose, Alfred H. Moore, Claude Flanagan, Willie D. Watson, Randall Lewis, Luke A. Austin, Philbert Wilcox and Warwick G. Ocomy (not at meeting).

At an evidentiary hearing, the testimony of some of these persons will be sufficient to prove to the Court's satisfaction that Mr. Zenoff was not representing some of the persons present; that Messrs. Kaplan and Rodeitcher encouraged (solicited them, from a legal standpoint) them to bring civil and/or criminal actions against Nabcor; that none of the Nabcor franchisees were told that they were members of an alleged class against GM; that Mr. Zenoff had dealings with GMAC and, therefore, had a conflict in interest which was not disclosed to any of the Nabcor franchisees in attendance at the meeting.

8. Mr. Zenoff, it appears, was trying to curry favor with GMAC by his letter of May 5, 1971 to Mr. A. S. Bruch, Vice President, General Motors Acceptance Corporation, General Motors Building, 767 Fifth Avenue, New York, New York 10022, in which Mr. Zenoff said:

> "You will recall that I, not too long ago, appeared in your offices with Tom Sullivan on behalf of the LaSalle National Bank in connection with the Tetra matter.
>
> "I enclose a copy of an article that appeared in the December 14, 1970 issue of the Wall Street Journal relative to litigation against General Motors Corporation and others by National Auto Brokers and others as plaintiffs.
>
> "I represent a group of people in the Chicago area who invested substantial monies with the Jenkintown people for franchises. I feel that my people were high pressured and were sold 'bags of wind'. I only mention this to you because I, as well as my clients, would be pleased to be of some help to General Motors' attorneys, if they feel it is needed.
>
> "I have felt so strongly about this that I referred our facts to the Postal Inspectors some time ago. However, nothing has been heard from the U.S. authorities as yet. If you feel I may be of help, please refer my letter to the appropriate people.
>
> "I still haven't forgotten your generous and kind courtesy to Tom and myself while we spent the long hours in your good offices."

9. It seems obvious from this letter that Mr. Zenoff was trying to use his alleged representation (in 1968) of certain Nabcor franchisees to enhance his own position (and the position of Lasalle National Bank) with GMAC, AT THE EXPENSE OF HIS CLIENTS. Mr. Zenoff was well aware from the Wall Street Journal article (See Exhibit 1 to the Zenoff affidavit) that "Six other concerns that presently or formerly served as National Auto's franchised brokers in the discount auto business also are plaintiffs in this action" and that "Listed as defendants were all four U.S. major

auto producers; certain of their dealers; 11 banks and consumer finance companies; four Better Business Bureaus; and 15 newspaper publishing companies". Because of his dealings with a bank (LaSalle National Bank) and a finance company (GMAC, also a defendant), Mr. Zenoff apparently decided that he would not investigate to see what claims the 6 Nabcor franchisees in this action had against GM, GMAC or any of the other defendants. Mr. Zenoff never communication with me, which he admitted to me when I dropped in to see him at his home in Glencoe, Illinois on Sunday, March 16, 1975. With respect to the class action and his failure to advise his "clients" that the Nabcor action was commenced as a class action on alleged behalf of all Nabcor franchisees including his "clients", Mr. Zenoff asked me "What difference does it make?"

10. It appears that Mr. Zenoff was more interested in seeking opportunities from GMAC-GM than he was in obtaining recovery for his "clients". For about 3 years he never commenced an action against Nabcor even though he had been retained to do so at least by Nabcor franchisee Alfred H. Moore. All Mr. Zenoff did was to make several criminal complaints, one of which resulted in a compromise payment by Nabcor of about $500 to one of his clients, Mr. Claude Flanagan. Now, in 1971, when Mr. Flanagan sends him the Wall Street Journal article about this action, Mr. Zenoff runs to GMAC to volunteer his services and the services of his "clients" in an effort to build up his own stature and the stature of LaSalle National Bank (a major lender to GMAC, I believe) with GMAC, IN CALLOUS DISREGARD OF THE INTERESTS OF HIS NABCOR FRANCHISEE "CLIENTS", and without any investigation to determine whether his clients may have a claim against GMAC, GM or any others. It seems indefensible for Mr. Zenoff to have done what he did.

11. It seems even more indefensible for Messrs. Paul, Weiss, Rifkind, Wharton & Garrison to have taken advantage of Mr. Zenoff's conflict of interest. Mr. Zenoff's letter to Vice President Brush of GMAC is a clear indication of the conflict of interest (even Mr. Moore says so, see ¶ 13 of his affidavit) between Mr. Zenoff and the Nabcor franchisees, particularly because of the dealings of LaSalle National Bank and Mr. Zenoff with Mr. Brush of GMAC. Plaintiffs herein claim it was improper for Messrs.

Kaplan and Posdeitcher [illegible] the [illegible] Weil [illegible], representing GM and GMAC in the Nabcor action, to use Mr. Zenoff and his alleged "representation" of various Nabcor franchisees, as an excuse to obtain from such franchisees information which could be used by GM-GMAC in defeating the interests of the Nabcor franchisees in the class action against GM-GMAC, particularly when the Nabcor franchisees were never told that they may have an action against GM-GMAC, and that such action was pending in a class action as to which Messrs. Kaplan and Posdeitcher were seeking information in defense. The number and degree of conflicts of interest is staggering, and should not be condoned by this Court. The Nabcor franchisees were not being represented by Mr. Zenoff in this action and, therefore, any representation he may have had was irrelevant from the standpoint of this action. I should have been advised and should have been given an opportunity to be present at any meeting wherein counsel for GM-GMAC were attempting to influence or were obtaining evidence from members of a class opposed by said counsel. The distinction is an important one to make, that it is improper per se for opposing counsel to communicate with parties (including members of an alleged class before any class action determination has been made by the court) as distinguished from the case where an attorney in a class action has contacts with members of the class he is attempting to represent. In the first instance, the legal problem relates to the undermining of the rights of the party with an adverse interest without the person having an opportunity to protect himself. In the other instance the legal issues centers around solicitation of business for the attorney. It is true that I had contact with Mr. Kemp and Mr. Owens, but both of them were members of the classes alleged to be represented by plaintiffs herein, and in neither instance did I solicit them to become members of the class. Mr. Kemp asked me if he could join the class and I do not recall what, if anything, Mr. Owens said about the class. I had no conflict of interest with either Mr. Kemp or Mr. Owens, unlike the colossal conflict of interest of the Zenoff, Kaplan, Posdeitcher group.

12. In fact, such contact with opposing parties was the basis for the disqualification of opposing counsel in a decision filed March 13, 1975 in the Southern District, by District Judge Owen, in Zeller v. Bogue Electric Manufacturing Corp., et al., a shareholder's derivative suit

To have the other defendants litigate at no expense is a deceptive attempt by the GM Defendants to misdirect the energies and limited amount of assets of Nabcor and Nabcor's counsel 75
Plaintiffs have a right to have each defendant defend himself with his own counsel without continuation of the illegal monopoly and conspiracy, on the merits of the case against such defendants 76
GM has no right to prevent plaintiffs from utilizing the judicial policy of favoring settlements 76
GM has no right to continue the illegal combination and conspiracy to keep Nabcor out of business and prevent Plaintiffs from obtaining a permanent injunction through the GM Defendants' Strategy of Strangulation and related acts of economic aggression. 76

18. To be candid with plaintiffs and the court, the GM Defendants should have stated all contacts they had with Nabcor franchisees, but they did not do this. Even in Chicago, they failed to disclose the large number of Nabcor franchisees present at the meeting with Messrs. Kaplan and Rosdeitcher on October 11, 1974. Nor do they describe what contacts they had with Messrs. Gerson and Gerson, two Nabcor franchisees connected with the Mesirov incident. Nor do they mention what contacts they had, if any, with Nabcor franchisees Nicholas J. Sipa, also represented by Ford's antitrust lawyers in Philadelphia.

19. Also, the GM Defendants should have set forth the contacts, if any, they had had with persons of any other type who may have brought or were thinking of bringing a suit against Nabcor or Nabcor's counsel. The absence of any denials (specific denials) makes it appear that the attorneys for GM have a lot to hide, particularly where claims of privilege and work product would sound hollow.

20. Defendants seek to have the Court enter an order (similar to a partial summary judgment) finding that the facts are as asserted by the GM Defendants in their Statement under Rule 9(g). This would seem difficult to do inasmuch as there are triable issues as to each of such statements under Rule 9(g) and furthermore plaintiffs have not had an opportunity to obtain discovery under Rule 56(f) to oppose such motion.

21. In order to oppose defendants' motion presumably under Rule 56(f) and in order to prepare for a hearing on plaintiffs' motion for a preliminary injunction, partial summary judgment and other relief,

have the following discovery:

1. Production of all notes, agenda, affidavits, statements, correspondence and other documents relating to the October 11, 1971 meeting in Chicago and all other contacts with the Chicago area Nabcor franchisees and Mr. Zenoff.

2. Production of all notes, agenda, correspondence, memoranda and other documents relating to the November 26, 1974 meeting of defendants counsel about plaintiffs' settlement offers.

3. Production of all notes, agenda, affidavits, statements, correspondence, memoranda and other documents relating to all contacts by Paul, Weiss, Rifkind, Wharton & Garrison and Sullivan & Cromwell with Nabcor franchisees Mesirov, Gerson, Gerson, Sipa or their counsel, the Mesirov firm.

4. Production of all notes, agenda, correspondence, affidavits, statements, correspondence, memoranda and other documents relating to any communications or contacts with any other Nabcor franchisee or their counsel (exclusive of the contacts and communications with plaintiffs' counsel herein).

5. Production of all notes, agenda, affidavits, statements, correspondence, memoranda and other documents relating to any communications or contacts with Celina Mutual Insurance Co. regarding Nabcor or Nabcor's counsel.

6. Production of all notes, agenda, correspondence, affidavits, statements, correspondence, memoranda and other documents relating to any communications or contacts with the New York State Attorney General's Office or any other governmental agency concerning Carl E. Person, Nabcor, or any of the other plaintiffs.

7. Depositions of persons who attended the Chicago meeting on October 11, 1971; R. L. Berg regarding his Bergelson contacts and actions; the persons who attended the meeting of defendants' counsel on November 26, 1974 regarding plaintiffs' settlement offers; Victor Bergelson and other members of the Bergelson Group who came into Nabcor's office and took away Nabcor's records under gunpoint; and other GM-GMAC personnel relating to the Carz, Celina and Bergelson matters.

8. Interrogatories directed to the issue of the litigation expenses and payments of each defendant; the business dealings between the 4 defendant auto manufacturers and the other defendants; and the profit margins of each of the 4 defendant auto manufacturers.

Carl E. Person

Subscribed and sworn to before
me this 20th day of March, 1975.

Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in New York County
Commission Expires March 30, 1976

NATIONAL AUTO BROKERS CORP., et al., : 70 Civ. 5421A (TIG)

Plaintiffs, :

-against- :

GENERAL MOTORS CORPORATION, et al., :

Defendants. :

- -x

AFFIDAVIT OF
ALFRED H. MOORE

STATE OF ILLINOIS)
: SS.:
COUNTY OF COOK)

ALFRED H. MOORE, being duly sworn, does hereby depose and say:

1. I reside at 6048 W. Nelson Street, Chicago, Illinois, am fully familiar with all the facts stated herein, and make this affidavit for use in support of plaintiffs' motion for a preliminary injunction, partial summary judgment and other relief.

2. I purchased a franchise from Nabcor on or about October 9, 1967, and commenced operations under the trade name "Al Moore Auto Consumer Service". The business was not successful, particularly because I could not get cars from Nabcor or Nabcor's Area Distributor, Automobile Brokers, Inc. (the Claude Flanagan franchise). The only car I ordered from Nabcor was months late in being delivered.

3. Somebody in Automobile Brokers, Inc. during 1968 suggested that I and other Nabcor franchisees meet with an attorney to see if there was any action we could take against Nabcor. About 10 of us met with a black attorney (whose name I cannot now remember). Subsequently, Randall Lewis (a principal of and the manager of Automobile Brokers,

Inc.) suggested that we switch attorneys, and that we visit with attorney A. J. Zenoff. On or about June 11, 1968 I I retained Mr. Zenoff to bring an action against Nabcor. No action was ever brought. As far as I can recall, the next time I communicated with Mr. Zenoff was through the receipt of a letter from him, dated June 15, 1971, which is annexed as the first page of Exhibit B to plaintiffs' affidavit in support of the motion. I am unsure, but may have received a letter from Mr. Zenoff saying that he was still working on the matter.

4. As of October 11, 1971, I still considered Mr. Zenoff as my attorney, although I did not know whether or not he had commenced an action on my behalf against Nabcor.

5. On October 11, 1971, I attended a meeting at Mr. Zenoff's office, because of the letters I had received from him and possibly because of telephone discussions with Lewis Randall of Automobile Brokers, Inc. At this time, I was of the impression that the purpose of the meeting (whether or not a prior action had been commenced) was to obtain more information to use in an action against Nabcor, I was also under the impression that the General Motors' attorneys were to assist us in some was in our action (or intended action) against Nabcor. I got this impression from the documents and, possibly, with one or more discussions with Mr. Randall of Automobile Brokers, Inc.

6. At no time did Mr. Zenoff ever advise me (or any of the other Nabcor franchisees, to my knowledge) that Mr. Zenoff had any dealings with General Motors Corporation or General Motors Acceptance Corporation; that he had any conflict of interest between me and GM or GMAC; that Nabcor had brought a class action against GM, GMAC or any other defendants; that I was a member of the class alleged in the Nabcor complaint against GM, GMAC and other defendants; on the nature

of the claims by Nabcor and the franchisee plaintiffs against GM, [illegible] and the other defendants; Mr. Zenoff never supplied me with a copy of the Wall Street Journal article about the Nabcor action against GM referred to in his June 15th letter; and I do not recall [illegible] discussion of the article by Mr. Zenoff prior to the October 11th meeting. The article was mentioned in the meeting, I believe.

7. The format for the meeting was a question and answer session for the GM-GMAC attorneys. The purpose was to have us supply as much derogatory information about Nabcor as we could supply. Nabcor's suit against GM-GMAC was not relevant to me at this time, and I did not see that it had any bearing on my claims against Nabcor and desire to recover for my losses. Mr. Zenoff never suggested that Nabcor's action against GM-GMAC in any way could benefit me. The GM-GMAC attorneys at the meeting never said that Nabcor's action was a class action or that I was a member of the class that Nabcor alleged to represent. It never occurred to me that GM or GMAC would be violating the antitrust laws, particularly because of the court decision which allowed independents to compete with IBM in the leasing of IBM equipment.

8. Up to and including this meeting I assumed that Mr. Zenoff was acting as my attorney, until I got the letter dated November 11, 1971 in which Mr. Zenoff conditioned his commencement of the action against Nabcor upon receipt of $300 from us. Mr. Zenoff had never made any prior requests for money.

9. I got the impression at the meeting from the GM-GMAC attorneys that they were going to help us out in our suit against Nabcor any way they could. They did not offer us any money. I took this as substantial encouragement for us to continue our efforts against Nabcor. The fact that two GM-GMAC attorneys appeared to speak with us was very impressive to me.

10. The October 11th meeting lasted for about 1½ hours.

11. In addition to myself, Mr. Zenoff and the two GM-GMAC attorneys, the other persons who attended the meeting were Claude Flanagan, Randall Lewis, David Rose, Donald Kurtz and about 3 others from Automobile Brokers, Inc., for a total of about 11 persons.

12. Most of the meeting centered around the GM-GMAC attorneys.

13. I have read the May 5, 1971 letter from Mr. Zenoff to Mr. Brush of GMAC (shown to me by Mr. Ferson) and it does appear to me that Mr. Zenoff was not acting on my behalf, and that instead he may have had a conflict of interest.

14. Mr. Zenoff never discussed with me (before, during or after the meeting of October 11th) the possibility that GM-GMAC or any other person(s) were or may be liable for the damages I suffered following my purchase of the Nabcor franchise.

15. The GM-GMAC attorneys and Mr. Zenoff, during the meeting, elicited from me and the other Nabcor franchisees in attendance information based on which I and the other Nabcor franchisees believed we had one or more valid claims against Nabcor.

16. At the end of the meeting, I was led to believe that there would be further communications with the GM-GMAC attorneys about our case against Nabcor. Neither of the two GM-GMAC attorneys asked me or any of the other Nabcor franchisees for an affidavit.

17. It appeared to me that the two GM-GMAC attorneys were taking notes on what we said at the meeting.

18. 14. No promises of any kind have been made by Mr. Person or any other person as an inducement for me to make this affidavit.

Alfred H. Moore
Alfred H. Moore

Subscribed and sworn to before
me this 17 day of March, 1975.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

NATIONAL AUTO BROKERS CORP., et al., :
Plaintiffs, :
-against- :
GENERAL MOTORS CORPORATION, et al., :
Defendants. :
- - - - - - - - - - - - - - - - - - - -x

70 Civ 5421A (TPG)

AFFIDAVIT OF C. DAVID ROSE

STATE OF INDIANA)
: ss.:
COUNTY OF *lake*)

C. DAVID ROSE, being duly sworn, does hereby depose and say:

1. I reside at 10001 Oak Avenue, Portage, Indiana, am fully familiar with all the facts stated herein, and make this affidavit for use in support of plaintiffs' motion for a preliminary injunction, partial summary judgment and other relief.

2. My partner, Donald R. Kurtz, and I purchased a franchise from Nabcor, Inc. in September, 1967, and operated the franchised business under the name "Nucar Mart", located at 4444 Broadway, Gary, Indiana. The business was not successful, particularly because of Nabcor's failure to perform for us as promised.

3. Mr. Kurtz, I and certain other Nabcor franchisees in the Chicago metropolitan area discussed the possibilities of bringing suit against Nabcor for recovery of our losses. These discussions took place during various meetings and telephone conversations from late 1967 to early 1971.

4. Mr. Claude Flanagan, a Mabcor franchisee, arranged to have us meet several times with attorney Zenoff in Chicago during 1970-1, and we as a group requested Mr. Zenoff to investigate and report to us what remedies we Mabcor franchisees had against Mabcor. We were not asked to pay, nor did we pay, Mr. Zenoff for this investigative work. I was not a client of Mr. Zenoff at any time.

5. By various letters and telephone communications, Mr. Zenoff urged that I and the other Mabcor franchisees be present at a meeting in Chicago with GM-GMAC's attorneys from New York. Mr. Kurtz and I agreed to attend. I got the impression that there was some way I could benefit from the meeting.

6. Mr. Zenoff introduced the GM-GMAC lawyers, and one of them (Mr. Kaplan, I believe) took charge of the meeting. The purpose of such meeting from the standpoint of Mr. Kurtz and myself as well as the other Mabcor franchisees was to see what assistance we could get from GM's attorneys in the action we wanted to bring against Mabcor. I did not know in what ways, if any, such assistance could be provided by the GM attorneys.

7. The meeting was held in Mr. Zenoff's office in Chicago on October 11, 1971 at 2:00 P.M., and lasted for about 2 hours. I, Mr. Kurtz, Claude Flanagan, Alfred H. Moore and about 2-3 other Mabcor franchisees (who were also franchisees of Mabcor Area Distributor Claude Flanagan) were in attendance, together with Lewis A. Kaplan, Esq., of Messrs. Paul, Weiss, Rifkind, etc. and one other male attorne from this New York law firm of GM.

8. The GM attorneys stated that Habcor had brought an action against GM, GMAC and other defendants. I do not recall whether they stated the action was a class action; nor do I recall whether they stated that Mr. Kurtz, I or any of the other Habcor franchisees were alleged to be members of a class, or that we, as Habcor franchisees, had an interest (of whatever nature) in the action brought by Habcor. Neither the GM attorneys nor Mr. Zenoff advised us in the meeting of the nature of Habcor's various claims against GM-GMAC and the other defendants. The total discussion lasted for a few minutes at best. It was obvious to me that the meeting was set up to discourage any of us Habcor franchisees from allying ourselves with Habcor.

9. At no time (before, during or after the meeting) did Mr. Zenoff ever indicate to me that he had any conflict of interest affecting Mr. Kurtz or me or any of the other Habcor franchisees in the group. I am unaware to this day of the existence of any conflict of interest on the part of Mr. Zenoff (although recently Mr. Persen, Habcor's attorney, suggested to me the possibility of such conflict).

10. Mr. Zenoff never discussed with me (before, during or after the meeting) the possibility that GM-GMAC or any other person(s) were or may be liable for the damages Mr. Kurtz and I suffered following the purchase of the Habcor franchise.

11. During the meeting, Mr. Zenoff and the GM-GMAC attorneys elicited from me, Mr. Kurtz and the other Habcor franchisees in attendance, information based on which I and the other Habcor franchisees believed we had one or more valid claims against Habcor.

12. The GM-GMAC attorneys offered during the meeting to give us (the Nabcor franchisees), from time to time, information which could support our claims against Nabcor as they acquired the information in their own [illegible]. The GM-GMAC attorneys never offered any monetary payments to us, directly or indirectly.

13. After the meeting was over, Mr. Kurtz and I decided not to pursue our claims against Nabcor, basically because of our belief that the cost of obtaining a judgment against Nabcor could equal or exceed the amount of any such judgment payable to us.

14. No promises of any kind have been made by Mr. Person or any other persons as an inducement to make this affidavit.

C David Rose
C. David Rose

Subscribed and sworn to before
me this 11th day of March, 1975.

[illegible]
Notary Public

[illegible]

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THE COURT: Let me first dictate a short statement with respect to plaintiffs' motion for preliminary injunction.

A fairly massive set of papers was served and filed January 10, 1975 on a motion for preliminary injunction, partial summary judgment and other relief. At a subsequent conference I announced that I felt that the motion was patently without merit, did not require any response by the respondents, and in order to make some small dent on the paper work in this case I directed that the motion not be answered and denied it on the spot. Subsequent to that I felt that it was perhaps unfair to the defendants to prevent them from making a record and consequently allowed whatever response on the part of the defendants they felt was appropriate.

Since then I have received a group of affidavits filed by the General Motors defendants on March 13, 1975. These defendants did not feel it necessary to submit a memorandum of law.

I should add that prior to the latter group of affidavits I had received supplemental papers from the plaintiffs which were filed January 29, 1975 in response to my request that certain allegations be further specified in connection with the motion for preliminary injunction and then, as I said, we received the responding materials on March 13, and now I have a supplemental affidavit from the plaintiffs filed March 20, 1975.

This entire skirmish is simply one more illustration of what has happened so often in this case; that is, the generation of tremendous paper work which is absolutely fruitless and has no legitimate basis or reason whatever.

Let me describe briefly the nature of the motio which I am denying as completely without merit. Plaintiff move for a preliminary injunction and some sort of partial summary judgment on the basis of the following claims, which are that General Motors and its counsel, Paul Wess Rifkind Wharton & Garrison, did the following things:

Interefered with plaintiffs' attempts to settle with other defendants.

Second, solicited suits by NABCOR franchisees against NABCOR.

Third, financed the defense of the suit for other defendants.

Fourth, indemnified or agreed to indemnify oth defendants against loss in this action.

Five, agreed post a bond for all the defendants in the event of an appeal.

Six, solicited creditors of NABCOR to attach NABCOR assets.

Seven, influenced third parties to act in other ways detrimental to NABCOR.

All of these claims are totally unsupported in so far as being the basis for any kind of preliminary injunctive relief or summary judgment or anything in this litigation.

Let me mention certain specifics. The allegation of interference with the attempts by plaintiffs to settle with other defendants is based on the foggy recollection of Mr. Person, who is the attorney for the plaintiffs, with respect to two or three telephone calls.

He goes on to say that he is not positive that any of these conversations took place with the persons identified, but he does believe, although his recollection is not positive, that two or three attorneys told him that they would have to check out settlement with General Motors. Still, as I have indicated, Mr. Person basically cannot remember who said this or when. To say the least, there is an insufficient factual basis for the allegation, to say nothing of the absence of any showing of legal basis for any relief on the basis of the allegation.

The next point I will cover is the allegation

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that Paul Weiss solicited NABCOR franchisees to sue NABCO. This charge is based on what appears to have been a meeting held on October 11, 1971 in Chicago between Messrs. Kaplan and Rosdeitcher of Paul Weiss and a Chicago attorney named Zenoff and certain of Zenoff's clients or former clients.

The General Motors defendants have submitted affidavits that the meeting took place as a result of Zenoffhaving initially contacted General Motors Acceptance Corporation about the possibility of his clients suing NABCOR.

General Motors Acceptance Corporation forwarded Zenoff's letter to Paul Weiss and Mr. Kaplan of Paul Weiss requested an interview of Zenoff's clients. Messrs. Kaplan and Rosdeitcher wished to find out what Zenoff's clients' experiences were with NABCOR.

The October 11, 1971 meeting was the only contact between Paul Weiss and Zenoff's clients. Paul Weiss denies that it encouraged such clients to sue NABCOR or that it made any attempts to dissuade them from joining this suit as plaintiffs.

Two of Zenoff's clients, namely More and Rose, have submitted affidavits supposedly in support of plaintiffs' position on this motion. In both affidavits there are admissions, however, that these people had wanted to sue NABCOR as early as 1967 and 1968.

I tend, therefore, to credit the General Motors materials on this motion to the effect that Paul Weiss did not encourage or attempted to encourage the Zenoff clients to sue NABCOR and did not attempt to dissuade them from joining this present lawsuit. In any event, neither More nor Rose actually brought any action against NABCOR.

Rose states in his affidavit that in view of the cost of obtaining judgment against NABCOR the litigation would not have been worth the cost.

As to the third, fourth, fifth and sixth of the charges that I enumerated above, these relate to the alleged financial support by the General Motors defendants of other defendants. The charges are sufficiently rebutted on the facts by the affidavits of the General Motors defendants as to the law. It has never been clear to me why such allegations would give rise to the injunctive relief requested by plaintiffs, but leaving the lawsuit aside, the factual rebuttal is ample.

There is sufficient evidence in the affidavits that General Motors and General Motors defendants are paying the legal costs incurred only by these defendants and none others.

General Motors states, and I credit this statement, that t4he General Motors defendants have not agreed to indemnify other defendants or to carry the cost of any appeal bonds for any of the other defendants. It is General Motors' position that any defendant will do what it chooses regarding the settlement and, indeed, there have been numerous dispositions with respect to other defendants in this case thus far.

Regarding the seventh of the enumerated charges, namely, influencing third parties to act detrimentally toward NABCOR, this refers basically to troubles which NABCOR allegedly had in arranging for General Motors Acceptance Corporation loans and also refers to an armed robbery of NABCOR's Philadelphia offices by persons who were allegedly in part responsible for NABCOR's problems with GMAC. The plaintiffs claim that this robbery was part of a scheme by General Motors, GMAC and something called the Bergelson group to take control of NABCOR away from Frank Maiorana. One benefit from such scheme would be to achieve the termination of this lawsuit.

This is an absolutely outlandish claim and it is sufficiently rebutted by affidavits which I credit. The General Motors defendants have supplied an affidavit by one Robert Burg, president of the Chevrolet Division, who is said by plaintiffs to be implicated in the above scheme. Burg denies that he aided Bergelson in any attempt to gain control of NABCOR or Maioranoa, and I credit this affidavit. Bur states that in connection with some automobile transaction he permitted the extension of monthly payments on a loan payable by Bergelson to Chevrolet, but this is a far cry from any connection with the scheme described above.

To the extent that I have not dealt with any other factual allegations made by the plaintiffs on this motion, I state in general that I find them baseless in general and as a whole and totally lacking in providing any legal basis for the relief requested.

The motion filed by plaintiffs January 10, 1975 is denied in all respects.

Now we come to the other items on the agenda. I would be receptive to a motion to obtain costs. I don't think that the General Motors defendants had to probably spend any excessive amount of time on it, but whatever time was spent I want a motion presented to assess costs. There was absolutely no excuse for that motion and I will consider both assessing the actual attorney's fees and disbursements incurred in connection with defending that motion, and I will consider imposing something to cover the cost of court personnel handling that motion. It was

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absolutely with out excuse.

MR. PERSON: Your Honor, may I just present to you an affidavit of one of the persons in the meeting --

THE COURT: You may not.

MR. PERSON: It is an affidavit by Donald Kurtz.

THE COURT: You may not. It is far too late. I handed down my decision and I am not going to receive further materials on it.

I think perhaps the next thing we might do is to consider the motion for summary judgment of the Westches Rockland newspapers. I am not prepared to really go into that in any full detail. I do require conferences in advance of these motions and that is the reason I know that Mr. Person has not responded, but I do want to know from you, Mr. Person, if you intend to oppose that.

MR. PERSON: I thought, No. 1, your Honor, that you had said that because of the amount of discovery left in the case that you really couldn't properly entertain this kind of motion until we are ready to go to trial so I can present my prima facie case. I thought that was the thrust of what you had said previously.

THE COURT: That is basically right. I think we should try to avoid motions for summary judgment right now. The only thing is if we have peripheral defendants who really should not be involved in the expense of this action, I think it probably is merciful to them and proper to see if they do have meritorious summary judgment grounds. The experience we have had so far in some of these is that they haven't done very much except to create paper work and ultimate denial.

Who is here for Westchester-Rockland newspapers?

MR. LEADER: Your Honor, my name James Leader and I am from Townley, Updike.

THE COURT: Do you represent other defendants?

MR. LEADER: I represent Newsday. I'm speaking for Mr. Morris. The hardship in this case is that we are acting really as local counsel for Westchester-Rockland newspapers.

THE COURT: Do you have to, really, do anything on their behalf?

MR. LEADER: Mr. William Morris from Nixon Hargrave is acting as counsel for them. In addition, there have been several occasions over the past four and a half years of this action where he has had to travel into their district.

THE COURT: Why does he have to travel? I don't see why he has to be here at every one of these meetings.

MR. LEADER: Not for every one of these meetings but for depositions. As we have indicated in the summary judgment papers, they haven't disclosed the elements of their involvement in this action at all. This is exactly the kind of peripheral defendant that your Honor had reference to.

THE COURT: We are going to have to have ultimately a series of pretrial conferences when the discovery is over with to narrow the issues and narrow the parties and I think to get involved in advance of that in summary judgment motions made on papers --

MR. LEADER: The papers we submitted are very brief.

THE COURT: I know what I am going to get from the other side, if it is opposed.

Is there any activity required of you so that you could not hold this off and not have a disposition of this until we get into our final pretrial proceedings?

MR. LEADER: Quite frankly, your Honor, it depends on how far down the road you are permitting this case to go. If we are going to have to prepare for our client to go to trial it is ging to be expensive. We have to attend depositions and --

THE COURT: Why do you need to attend depositions?

MR. LEADER: A conspiracy alleged in this case. We have not attended all these depositions, but we in some way have to monitor them and read the transcripts and look at the exhibits. We are peripheral defendants who have done nothing and to even expend a thousand dollars is too much.

THE COURT: Wouldn't Paul Weiss notify you if there is any reference to Westchester? I know perfectly well that all the defendants in this action are not taking any active role. They would be insane if they would, and they don't attend the deposition and they don't read the transcripts. The Buick dealer up in Buffalo or whatever it is is not doing that. He shouldn't.

MR. LEADER: We do this on a selective basis, of course, but I think any cost in this situation in continuing to defend this case on behalf of our client cannot be justified.

THE COURT: What is the ground of your motion?

MR. LEADER: That the discovery taken has clearly indicated, one, that there is no evidence of our involvement and, two, that there is entirely --

THE COURT: What reference is there so far in

THE COURT: Anything you want to do. I think we have a motion which is being pressed.

MR. PERSON: Your Honor, I would say it is premature since I haven't been able to take the deposition yet of the franchise dealers in the area. I think that is a part of it.

THE COURT: What depositions do you want to take before you can answer this motion?

MR. PERSON: It is hard to say that one deposition may not lead to another and the chances are that everyone will say that they had no complaints. Let's face it, this is the typical kind of testimony. It may well wind up with the statements that they made to us in refusing the ad that might be it plus the Better Business Bureau contact and the membership in the Better Business Bureau so that the problems with the Better Business Bureau are a part of it.

THE COURT: You submit a memorandum or affidavit setting forth the proof that you have of conspiratorial participation on the part of Westchester-Rockland and if you don't have the proof yet, what you intend to get.

Now let's go on to the next thing. We have this application to restore Counts 5 through 7.

MR. KLEINBARD: Mr. Kaplan will respond to that.

THE COURT: Okay. I think we can handle that orally. What was the prior disposition; what transcript was that in?

MR. KAPLAN: July 12, your Honor.

THE COURT: What page?

MR. KAPLAN: Page 10, your Honor.

THE COURT: Could I make a final diposition on those claims?

MR. KAPLAN: That is the disposition you made, your Honor, just what is on that page.

THE COURT: Just refresh my recollection.

What did 5 through 7 allege?

MR. KAPLAN: They alleged that the four defendant automobile manufacturers had refused to make available to NABCOR a warranty program pursuant to which payments would be made to NABCOR for servicing automobiles purchased by customers through the NABCOR System, and if I can just refresh your recollection about the pages before page 10 of the transcript, I would indicate that you were of a view that plaintiffs asserted two sources of warranty related claims. They asserted first the one I just outlined. They were not permitted to act like a franchise dealer with respect to cars.

As to the second claim, there was a conspiracy between General Motors and Ford and the franchise dealers to refuse to service the cars that were sold through the NABCOR System. The second of those two claims is still in the case as Count 1. The first of them --

THE COURT: That is all, thank you. That is the only thing as ear as what we will speak of as the first phase, the refusal to permit NABCOR franchisees to have warranty programs and do warranty servicing and make a profit thereon. Those claims will remain dismissed and so as to Counts 5 through 7 I will deny the motion to reinstate them.

MR. PERSON: May I argue the point?

THE COURT: As far as any claim to deny warranty service to car buyers, that is still in the case and will be in the case.

MR. PERSON: Could I add just a little bit to this?

THE COURT: All right.

MR. PERSON: Since I haven't had a chance to say anything on my behalf.

THE COURT: You submitted papers.

MR. PERSON: The claims that we made with respect to the warranty program are that the programs of the defendant manufacturers permit NABCOR's customers to be harassed and deprive them of the benefits of the manufacturers warrantees to which the customers are fully entitled. That is a very major part of my warranty counts.

THE COURT: There is no use having a proliferation of counts. To the extent that there will be any evidence justifying that, I will receive it under Count 1.

4 MR. PERSON: What I am saying, your Honor, in other words, is that the structure of the warranty programs of the manufacturer in Counts 5 through 7 --

THE COURT: You have got a Count 1. Anything that is a legitimate claim can come in under Count 1, but the gravamen of these counts that I have dismissed, and it is right in the face of the complaint and we have dealt with this at length earlier, is the claim that NABCOR or its franchisees should be entitled to set up warranty service. That is completely contradicted, conclusively contradicted by the nature of the business as outlined in the publicity and as described in the complaint itself, in other portions of the complaint, and there would be absolutely no utility in going forward with the trial as to those.

MR. PERSON: May I at least explain the reason why the tail end of this has become important? The part that you describe is only the tail end of the dog. The

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dog itself is that our customers were not getting the warranty work they were entitled to and as a result, in order to have us get the warranty work we had to go beyond and try to get some kind of a program. That is the reason for the count. I think it is a deserving count and to --

THE COURT: It is denied.

I am now referring to your amended letter of March 3, 1975 proposing the agenda for a meeting which was originally to be held March 18 which is now being held today. We have covered Item No. 1 regarding the Westhcester-Rockland motion. We have covered Item No. 3, which is the motion for a preliminary injunction, which I handled at the beginning of the hearing.

MR. KLEINBARD: No. 9, your Honor.

THE COURT: No. 9 we have covered just now, the warranty claims.

Now, that leaves Item 2, determining the status of the action transferred to the Southern District and setting a date for trial thereof. How does that stand?

MR. PERSON: That was transferred by Judge Weinstein upon application by the Better Business Bureau directly to you and I would like to know what the status of the case is, whether it is separate such as the B suit in transcript as an interrogatory.

Mr. Person objected. He says he doesn't want to answer that now.

The second one relates to leasing companies.

Your Honor will recall that there remains in this case a count claiming that fleet allowances paid by General Motors to leasing companies vilates Section 2A of the Robinson-Patman Act.

We had asked Mr. Person four years ago to identify those leasing companies which each of the plaintiffs claim to have competed with because injury to competition is an element of a cause of action.

THE COURT: Those are clear. What about those answers?

MR. PERSON: I am trying to prepare drafts. It may only be two interrogatories but it is almost like the whole case.

THE COURT: They have to be got done. When will you have them?

MR. PERSON: In 30 days. I will have answers.

THE COURT: All right.

I have been here for nearly two hours. My time is running out.

MR. PERSON: I have a proposed order for, and for an order under Rule 31 permitting depositions to be taken on written questions and I would like--

THE COURT: Of whom and where?

MR. PERSON: Just a general order to allow a non-attorney to be able to go out and do that in some other city. The problem I have is I can't be in all cities and rather than taking the deposition--

THECOURT: You don't have to be in all cities. We don't have to have depositions in all cities. I would not consider signing such an order.

I read this Business Week about your proposal to have thousands of depositions and interviews and to me it was a horrendous thing and the spectre is horrendous now.

MR. PERSON: I am talking about co-conspirators. People who lhave information which they gave to us. Rather than noticing at a very great expense a deposition where everyone would have to attend or various attorneys, this is a way of bypassing that and letting --

THE COURT: The trouble with this case is the depositions are out of hand.

One thing I meant to do today and I haven't had time-- I would like to get a list of all depositions taken and all depositions that everybody now proposes to take and sometime soon I want a meeting where we can pin down the number of depositions to be taken so before I sign-- I won't sign a blanket order. Before I sign any order at all along that line I want to know who we are talking about.

What's next?

MR. PERSON: The question relating to compensating balances is still around and I propose to obtain discovery of GM, the person's name was supplied to me and I'm wondering if that is permitted under the present state of orders that you have issued.

THE COURT: I don't think compensating balances is any more relevant now than it was when we worried about it a while ago.

MR. KLEINBARD: The only thing your Honor required us to do is to supply the name. We have given him the name.

THE COURT: The main thing for you to do is to supply me within a couple of weeks, both sides, maybe you can work out a joint statement or something like that,but I want a list-- why doesn't Paul Weiss initially present a list of all depositions taken and completed, a list of all depositions that are being taken and not completed, a list of all depositions that you propose to take. And then you submit any corrections or additions and add to it the lz:mg

depositions you propose to take, Mr. Person. And then we can have a meeting on depositions.

MR. PERSON: Can you require them to produce the documents relating to the manufacturers' destination charge policy? We haven't yet had those documents.

MR. KLEINBARD: Your Honor will recall that when we were discussing the interrogatories on that subject, which has come up now several times, you have indicated that there would be a deferral of discovery on the issue of destination charges.

THE COURT: I will not hear of that.

MR. PERSON: Is it to be the same trial or a different trial on that?

THE COURT: We will see. You have a lot of work to do.

MR. KLEINBARD: We were in the midst of discovery on the basic aspects of count 1.

THE COURT: That's the main thing to concentrate on.

MR. PERSON: The production of the defendants' warranty policy and the warranties themselves. Each of the four automobile manufacturers. We haven't received those documents.

THE COURT: What about that?

MR.KAPLAN: The warranty documents, as the fleet documents, are available at our office. The fleet documents were produced in July. Mr. Person has never come to look at them.

I assume that's why he doesn't know the warranty documents are there. What are there are the warranties.

We maintin that the other documents that he wants about policies and procedures relating to warranties are not relevant. The claim relating to warranties --

THE COURT: Didn't I give some kind of a ruling?

MR. KAPLAN: Whatever there is, your Honor asked to be produced,is there.

THE COURT: It is a matter of producing. You inform Mr. Person where they can be produced and let's get them produced.

MR. PERSON: So we can have policy statements relating to--

THE COURT: Whatever I ruled on before is to be produced. And just eliminate any misunderstanding about that.

MR. PERSON: I would like to have the defendants serve a witness list so I can see who it is they propose to call as witnesses.

MR. KLEINBARD: Your Honor, when this subject came up on December 12th --

THE COURT: We are going to get-- the main thing to do is complete the discovery. You give the list I talked about as far as proposed-- people to be deposed and that will be all we can do right now.

What's next, Mr. Person?

MR. PERSON: I have other points in the interrogatory that I propounded that I was hoping you could go over. I have another-- here is a point. I have a request to produce documents with interrogatories. This is a copy of it. I haven't served it yet according to your orders not to serve interrogatories without your review. I would like-- this relates to rulings that may have been obtained with respect to any violations of motor vehicle laws by NABCOR that would be claimed at trial by any of the defendants.

I would like to see what rulints, if any.

Newsday has come up with a ruling in 1972 upon which they claim their conduct may have been proper. I want to see if there are any other such rulings that any defendant may claim is a basis on which their refusals of NABCOR took place or could have taken place.

THE COURT: Have you shown this to Mr. Kleinbard?

MR. KLEINBARD: I have it, your Honor. We object

(Retyped) A 1880

SCHEDULE A

HOW ACTIVITIES DIRECTED AGAINST NABCOR OR A NABCOR FRANCHISEE ADVERSELY AFFECTS NABCOR AND EVERY OTHER FRANCHISEE

I. HOW A BUSINESS IS STARTED

This answer by plaintiffs to Interrogatories 15, 16 and 17 to "Second Set of Interrogatories with Request to Produce Documents" has been prepared on the assumption that some persons reading this answer may not have a business background and, therefore, may be able to use an explanation of certain basic business principles to be able to more fully understand the bases for plaintiffs' claims for damages.

A person (let's call him an "entrepreneur") who wants to make money (*i.e.*, "profits") by going into business usually has only a comparatively small amount of capital available for the business venture (for argument's sake let's *assume* $10,000). If the entrepreneur selects a business activity which is old, well-established and competitive (such as the operation of a gas station) it should be comparatively easy to commence the business, but the return on invested capital will be limited by the competition (let's say to an assumed 15% return before taxes). Thus, the entrepreneur may be able to expect a 15% return or profit each year (over and above his own compensation as officer or employee of the Company, which position he presumably could obtain elsewhere without the capital investment if he tried hard and long enough) on his $10,000 -- or a pre-tax profit of $1,500. (Of course, if he left his money in a bank, it would draw 6% interest anyway, so that the additional return on his invested capital in the gas station would be only 9% or $900 per year in excess of what he could have done if he (a) left his $10,000 in a bank to draw a safe 6% interest; and (b) found a similar position in somebody's else's company.

To be able to derive a profit on invested capital in excess of the $900 per year, an entrepreneur often tries to start a business based on a comparatively new, non-competitive concept, which will allow him to charge higher amounts for the product or service than could be charged once the business activity becomes competitive. This non-competitive aspect to his new business may enable the entrepreneur to earn profits in excess of the $900 and be able to attract needed venture (risk) capital and good men to the business -- all because of the high profit potential underlying the idea during its emergence as a new business in a comparatively non-competitive area. Once competition comes in, which is bound to occur in a competitive or semi-competitive market for the placement of venture capital, the entrepreneur's growth rate is cut back by the forces of competition. Therefore, it is of the utmost urgency for the entrepreneur to get his new business going on a profitable basis as fast as possible, and to maximize his share of the prospective market before the competition (with greater amounts of available capital) start moving in to dominate the new industry.

To start such a new business, however, is unlike starting a gas station or restaurant, where the business routine (including suppliers, pricing, forms, agreements, advertising, sales promotion, equipment) required to earn average profits in the industry are not difficult to imitate. In fact, certain suppliers (of gasoline and related products) are anxious to do all the spade work for the new businessman, often by making the businessman a franchisee of the supplier.

In a new business based on a new idea, however, the business system required to be established has no predecessor, by definition, and it is up to the entrepreneur(usually the top officer of the new enterprise) to try out a variety of different business combinations. The different elements of the ultimate business system of Nabcor are set forth immediately below, and represent the business and property of Nabcor which defendants and others unlawfully interfered with:

A. INITIAL ACTIVITIES:

1. Formulating the idea;
2. Investigating the legality and practicality of alternatives;
3. Incorporating and naming the business;
4. Obtaining trademark protection;
5. Putting together and training the original management group;
6. Establishing bank accounts and bank references;
7. Setting up various offices in various cities (Yonkers, New York, N.Y., Philadelphia, Jenkintown, Pa., and Washington, D.C.)
8. Obtaining a license as a new automobile dealer.

B. FINANCIAL PLANNING AND ACTIVITIES:

1. Performing market research and preparing projections on the sales potential for Nabcor and each of its franchisee categories (Master Broker, Area Broker and Broker);
2. Determining the anticipated expense structure of Nabcor and each of its categories of franchisees;
3. Planning to keep the expense structure as low as possible for a franchisee to be made as competitive as possible with other systems (whether or not in existence) for marketing new automobiles to retail purchasers;
4. Determining the amount of capital needed to start the Nabcor System.
5. Arranging for the initial equity financing of Nabcor;
6. Arranging for various interim financings of Nabcor;
7. Holding meetings and discussions with various persons possibly interested in investing in Nabcor on a private placement basis;

8. Attempting to raise money by a public intrastate offering in Pennsylvania;

9. Arranging for a public interstate offering of securities;

10. Preparing the documentation, over a 1-year period, required by the Securities and Exchange Commission to enable Nabcor to make a public offering of securities.

C. PERFECTING THE BASIC NABCOR SYSTEM:

1. Holding discussions with automobile dealers and salesmen, financial men, attorneys and prospective customers of the Nabcor System;

2. Performing factual and legal research to determine how new cars are sold exclusively by manufacturers' franchisees;

3. Performing factual and legal research to determine how new cars may be sold legally by a non-franchisee of the the automobile manufacturers;

4. Investigating motor vehicle laws and practices of motor vehicle departments;

5. Travelling overseas to look for franchises for foreign trucks, automobilesand other motorized vehicles;

6. Determining the method by which Nabcor and its distributors should be compensated for new and used cars sold by or through them;

7. Determining the markup over cost at which cars can be sold profitably through a brokerage system;

8. Formulating a program for the separation of sales from service in the sale of new automobiles;

9. Preparing price lists for new automobiles;

10. Preparing forms for use in the Nabcor system, including:

    (a) order forms
    (b) invoices
    (c) accounting forms
    (d) non-disclosure forms
    (e) report forms

11. Preparing many drafts of various franchise agreements to reflect the Nabcor System at each stage of its development;

12. (For other aspects to the Nabcor System, see Item H below.)

D. PERSONNEL:

1. Advertising for, interviewing, hiring, training and supervising key personnel and substitute key personnel when key personnel left the Nabcor System (because of their inability or unwillingness to cope with the problems created by the illegal activities of others directed against the System);

2. Advertising for, interviewing, hiring, training and supervising sales and administrative employees and their replacements when the original employees left the employment of Nabcor (often because of the added work load and demoralization created by the illegal activities of others directed against the System);

3. Building morale and sophistication in an ever-changing group of key employees and personnel, to attempt to have the Nabcor System become a stable system for marketing new cars, by trying to create and maintain a group of satisfied, competent and loyal key personnel and other employees;

4. Developing and conducting training programs for key personnel and other employees.

E. OBTAINING AUTOMOBILE SUPPLIERS AND FINANCING:

1. Locating and negotiating with franchised dealers of different makes of automobiles in various areas of the country willing to sell new automobiles to Nabcor on a "fleet" or wholesale basis;

2. Locating and negotiating with banks and finance companies in various areas of the country to try to obtain customer financing and Nabcor floor-plan (inventory) financing for purchases of new cars through the Nabcor System - a system unknown to banks and other conservative financial institutions and in possible conflict with the interests of some of their best customers and friends;

3. Locating franchised automobile dealers willing to perform the manufacturer's obligation under its warranty on new cars purchased through the Nabcor System;

4. Investigating the market for foreign cars and possible overseas suppliers of foreign and domestic (U.S.) new automobiles;

5. Establishing a system for obtaining up-to-date prices lists for all new cars manufactured by General Motors, Ford, Chrysler and American Motors.

F. NON-AUTOMOBILE SUPPLIERS AND SUPPLIES:

1. Locating satisfactory suppliers for typesetting and printing of various agreements, forms, training manuals, price lists, advertising and sales promotion material;
2. Determining office layout and needed equipment and furniture, and purchasing or leasing the equipment and furniture;
3. Investigating alternative sources of supply, purchasing, trial use, additional purchasing from other sources, additional use, followed by tentative adoption of supplier and supply schedule, based on the three variables of (i) quality, (ii) price, and (iii) service.

G. MARKETING PROGRAM - AUTOMOBILES:

1. Establishing an overall marketing program for the sale of new automobiles on a nationwide basis;
2. Establishing an overall marketing program for the marketing of new automobiles by brokers;
3. Preparation of a system for the marketing of new automobiles by automobile brokers;
4. Categorizing and meeting all the objections reasonably to be anticipated by prospective purchasers of new automobiles through the Nabcor System;
5. Preparation of a sales presentation for the sale of a new car by a broker;
6. Working on a computerized quotation system for the mass quotation of new car prices to the public or to Nabcor brokers over the telephone or other terminal facilities.

H. DEVELOPMENT OF OTHER ASPECTS TO NABCOR SYSTEM:

1. Formulating and establishing a Nabcor used-car system;
2. Formulating, incorporating and licensing a Nabcor Finance company to afford financing to Nabcor customers;
3. Formulating a system for the performance of warranty work on new automobiles by Nabcor or other non-franchised organizations;
4. Formulating a system for the sale of accessories such as tires, radios, stereo equipment, air conditioning, heaters and other special equipment, by Nabcor and its franchisees

with the the sale of the basic new automobile, at prices lower than the prices currently being paid by new-car customers.

5. Formulating a system for obtaining insurance for customers of Nabcor or Nabcor franchisees which would give the Nabcor System "reserves" (i.e., kickbacks) when the Nabcor customer bought his car insurance through the Nabcor System.

I. SETTING UP THE FRANCHISE DISTRIBUTION SYSTEM OF NABCOR BROKERS:

1. Determining that the marketing of new automobiles could best be done by a franchise system of automobile brokers;
2. Dividing the country into territories for development by (a) Master Brokers; (b) Area Brokers; and (c) Brokers;
3. Preparing drafts of various forms of franchise agreements;
4. Pricing the franchises, which related to the fee to be paid to the Nabcor System by the customers thereof; the market potential for a Broker, and the projected profits of the franchisee;
5. Developing the marketing program for the sale of franchises;
6. Preparation of advertising copy and sales promotional material for the marketing of Nabcor franchisees;
7. Preparation of a sales presentation for the sale of Nabcor franchises;
8. Recruiting, training and supervising franchise salesmen;
9. Preparation of training manuals and other training material for franchisees and their personnel;
10. Interviewing prospective franchisees;
11. Establishing and conducting training programs for franchisees and their personnel to teach them the highly complex and sophisticated automobile business;
12. Having extended discussions, visits and other communications with franchisees as part of their training.

J. DEFENDING THE NABCOR SYSTEM:

1. (Part of Nabcor's involvement in defending the Nabcor System is detailed in Count 1 of the Complaint.)
2. Nabcor had to find substitute franchised dealers as suppliers

of new automobiles whenever old suppliers refused to sell or deliver cars to Nabcor;

3. Nabcor had to find franchised dealers willing to perform warranty work, in fulfillment of the manufacturer's obligation to perform service, for cars purchased through the Nabcor System;

4. Meeting with personnel of the Justice Department, Federal Trade Commission, Senate Committees and Sub-Committees, and Congressional Committees to discuss the unlawful interference with the Nabcor System by Defendants and Co-Conspirators;

5. Handling complaints by Nabcor franchisees who had pressure brought upon them by local interests (such as dealers, dealer associations, newspapers, Better Business Bureaus, banks, motor vehicle bureau personnel, state police, attorneys general, district attorneys, consumer fraud bureaus) because the franchisees were not able to understand or cope with the problems because of their relative lack of sophistication in the automobile business and their reliance upon Nabcor to defend the Nabcor System;

6. Telephone calls and travelling to many cities to visit Nabcor franchisees who needed help in establishing their franchises in light of the anti-competitive practices taking place against them in their respective localities;

7. Discussing the Nabcor System with interest groups such as:

   A. Automobile Manufacturers, who refused to allow Nabcor to buy new cars on a fleet basis from their franchised dealers and refused to allow warranty work to be performed on the cars by the franchised dealers;

   B. Newspapers, who refused to let Nabcor advertise new cars or Nabcor franchises;

   C. Dealers, who refused to sell, deliver or service new cars sold through the Nabcor System;

   D. Better Business Bureaus, who were looking into Nabcor's activities at the request and for the benefit of other interest groups (to determine whether Nabcor should be permitted to advertise, for example);

   E. Motor Vehicle personnal and other government officials, who were interested in establishing for the benefit of interest groups that the Nabcor System was illegal.

8. Conferences with attorneys representing Nabcor in various situations referred to in No. 7 above.

9. Handling various suits brought by Nabcor franchisees who blamed Nabcor for their problems,

   (i) out of ignorance of the truth;

   (ii) to avoid the cost and delay of suing the persons actually responsible for any injury to them; or

   (iii) as a shill, who bought a franchise from Nabcor or a Nabcor Master Broker or Area Broker solely for the purpose of bringing suit against Nabcor and undermining the Nabcor System.

10. Discussions of the foregoing 9 problem areas with various attorneys, and preparing for the commencement of this action; and responding to defendants' requests for information and other matters relating to this suit.

After working with the business variables to arrive at the least expensive and most income producing combination, the most profitable system was developed — which is a combination of the best of the foregoing variables (if a profitable system can be found at all). These trials and errors in developing suppliers, supplies, forms, key personnel, prices, training systems, job descriptions, and advertising copy, to name only a few of the hundreds of unique business decisions which had to be made by Nabcor, were quite costly to Nabcor and substantial sums of money were spent in order to arrive at the final combination (with no quaranty of profitability whatever).

In many cases, the amount of venture (or risk) capital available to the entrepreneur will be sufficient to pay for the expenses of developing the business long enough for the entrepreneur to find the proper business system - possibly within a 3-6 month period, or say even a 1-year period. But if the capital available is insufficient to cover the developmental period of the business, the company will go under because of a "shortage of capital", even though the business could have been developed on a profitable basis if given a longer period — say a 30-year period (such as in the business of running a lumber mill where the key idea is to grow trees as a captive source of raw material for the mill). Assuming the same degree of competence of management, the length of time it takes to develop a profitable business depends on the nature of the business. Thus, some businesses can become profitable in a month, others in a year, and others never at all.

All of these trials and errors of the entrepreneur used in coming up with a workable business system necessitates developmental expenses for the company which are "non-recurrent". Once the system has been developed to the point of breaking even, for further developmental expenses are needed to allow the business to survive indefinitely in the present market structure (and management is not under the same degree of urgency to make the business more efficient).

These non-recurrent "start-up" costs are capital costs. These start-up costs are often capitalized (as "intangible assets") and amortized as an expense of the business (i.e., "written off" as a deduction from the business income) over a period of years, say 3 to 5 years, until the costs of development have been fully deducted from business income over the 3-5 year period.

Another way of thinking about the start-up costs of a new business is to consider how much money it takes to put together a new automobile — the costs of putting the first 1974 Chevrolet might be $100 million, even though every additional 1974 Chevrolet might have a "relative cost" or "out-of-pocket" or "variable" or "unit" cost of the manufacturer amounting to $500 or perhaps as much as $1,000. Part of the amount charged in excess of the relative cost (the "gross profit") is needed by the manufacturer to offset the $100 million capital (non-recurrent) expense in getting set to mass-produce the new model, and the rest of the gross profit goes to pay overhead and sales expenses and to provide a net profit for the manufacturer.

The length of time it takes a new company to reach its break-even point is crucial to the continued existence of the organization, for 2 major reasons:

1. The capital costs necessarily continue until the business reaches its break-even point; and

2. Competition will enter the new industry, to reduce the market percentage and profitability of the entrepreneur's new business.

Until the business reaches its break-even point (when the business activities are recurrent because they have been systematized on a break-even or even a profitable basis) the expenses in continuing to develop the system (i.e., to find the right combination of business methods) are non-recurrent (i.e., capital) and have to be paid by the entrepreneur out of his own pocket, if he has the additional money (which he often does not have), particularly if he has been in previous (unsuccessful) ventures to obtain the kind of business experience he needs to make this particular business opportunity successful.

During the development of the business, the start-up expenses (including the regular overhead expenses which must be paid as a capital expense before the business becomes operational on a break-even basis, and throws off enough gross profit to cover the overhead) are not being covered by any gross profit or a sufficient gross profit because of lack of an adequate sales volume during the start-up period.

Thus, the length of time the entrepreneur can hold out while developing his new business is directly related to the amount of capital available to him. The more capital he has, the more mistakes (i.e., non-recurrent developmental expenses) the entrepreneur can make and the longer he will be able to hold out until his business becomes break-even or profitable (if it ever does), and any further developmental expenses are covered by the gross profits of the business.

If a person has just enough capital to get a business going on a break-even basis, his capital will be completely consumed by his business at the point in time when the gross profits of his business just cover the overhead. This gives the entrepreneur time to improve various aspects of his business (not on a crisis basis under time pressures) to be able to produce net profits for the entrepreneur and any investors.

II. HOW ILLEGAL ACTIVITIES AFFECTED NABCOR'S BUSINESS

Anything which interfered unlawfully with management's development of the Nabcor System was an unlawful interference with the business and property interest of Nabcor and its franchisees in the developing Nabcor System. Each interference with the elements of the System interrupted the System's development to such extent and necessarily extended the time and/or diverted the capital needed to promote the System, which in the aggregate turned out to be fatal for the company by (i) causing the company to run out of money unnecessarily before the business reached its break-even point;

and/or (ii) giving competition an earlier start (in relation to Nabcor's stage of development) to take away franchise sales opportunities and new-car business (i.e., market percentage of a 9,000,000 to 10,000,000 new-car annual market) from Nabcor. Illegal activities which (i) caused delays in, or prevented Nabcor from, developing its business and (ii) added unnecessary expenses (hence diverted Nabcor's capital resources from the intended application) are described and their effect explained in the paragraphs below.

A business which cannot advertise in media of its choice cannot sell its products or services in a free market as it choose to do, and therefore may not be able to produce sales at a reasonable sales expense. The effect is to prevent the business from obtaining a gross profit on sales to pay overhead expenses and produce a net profit as well. Also, the Nabcor System (Marketing Program) must be changed to reflect Nabcor's inability to sell cars and franchises through its medium of primary choice, and forced Nabcor to try selling cars and franchises in less effective ways, thereby causing losses.

Delays were programmed for Nabcor by newspapers which stopped Nabcor's newspaper advertising just at the time Nabcor decided it needed to advertise. Nabcor was dependent on the ordered advertising to assist in the sale of franchises and automobiles. The delays or refusals to accept Nabcor's advertising resulted from defendant newspapers' unlawful concern for Nabcor's competitors (including major advertisers of new automobiles in the newspapers), by repeated requests for confidential business information about Nabcor until the newspaper either wore Nabcor out, Nabcor refused to supply the requested information (such as a list of all Nabcor's franchisees), or Nabcor spent 8-9 months providing the requested information after which the newspaper refused to permit the advertising anyway (by prior decision, thereby causing a tremendous dislocation of resources, by Nabcor's attempts for months to order and purchase advertising (illegible) with the newspaper ... previously ... decided to put ... Nabcor through ... (illegible).

This type of activity by a newspaper is usually rationalized to the public (when called upon to do so) as evidence of the newspaper's concern for the "well-being" or "protection" of the public; the truth is, however, that the newspaper is fillfully preventing price competition and is willfully assisting in the fixing of high prices for the public.

Nabcor's management wasted a lot of valuable time and less acceptable alternatives for advertising because of the fact that defendant newspapers required from Nabcor more information and qualifications than they required of their old advertisers, as an excuse to "justify" their decision to refuse Nabcor advertising, which acted as an illegal restraint upon the legitimate attempts of Nabcor to go into business and, incidentally, made it less desirable generally for other prospective businessmen to become competitors in various areas of business. If persons going into business are doing something illegal, city, state and federal authorities should be capable of handling the matter; and in any event the matter should not be handled by the competitors of the prospective advertiser (including their agent - the newspaper), who have very little interest in seeing his idea become a business reality. The competition being unlawfully restrained by the newspaper in many instances is the competition for advertising space to influence the discretionary spending habits of the newspaper's readers, and not just the direct competition of a major advertiser in the newspaper.

Delays in obtaining advertising approval often occur because the newspapers and other media (such as radio and television) will turn over proposed advertising copy to the local Better Business Bureau (a private organization with branch offices or franchises in most cities, funded for the most part by contributions of, and controlled by, major advertisers, major media and banking institutions, and obtaining public acceptance by free radio advertising extolling the virtues of the BBB's, treated as "public service messages" therefore paid for by the public which is being harmed by the BBB); the BBB's review agreements, forms and other aspects to the newcomer's business, as well as the proposed advertising copy, at the request of the media or competitors, to try to find something — anything — possibly misleading or illegal under state or federal law in the opinion of the non-lawyer laymen employed by the BBB (which might be considered the unlawful practice of law by the BBB, if anyone wanted to make the charge) and reporting the BBB's opinion on the alleged illegality to the inquiring media or competitor (who helped to finance this advertising review activity in the first place); this same review does not take place with respect to new products or services of old advertisers, particularly full-paid members of the BBB, which makes it appear desirable for a person going into business to first join the BBB, then have unquestionably acceptable business activities (such as opening a hot dog stand), then start advertising hot dogs; later, after establishing the hot dog stand, he should go into the desired business activity, and he probably will not have to go through the same screening given to persons who start off in business doing something different hence competitive. This practice of regulation of the newest competitors by the established competition is one of the key methods of preventing unsuspecting persons from going into business and should be permanently enjoined. The power of regulating who can advertise and who cannot should be turned over to an impartial governmental agency (such as the district attorney's office).

The BBB demands the innermost secrets of a new businessman (secrets which if given directly to competitors would be an antitrust violation) but as long as the secrets are demanded by the competitors through their BBB organization, it is OK, apparently. Well plaintiffs think not. In fact, the BBB reviews the agreements and tells the new businessman what changes the BBB (including representatives of competitors, media and banks) want in the agreement (presumably to conform to the established way competitors do things, to prevent the newcomer from rocking the boat for the others). These changes have to be made as a practical matter, as a condition to getting BBB approval to advertise in the media (who, it should be remembered, are in partial control of the BBB and set up this system of review by competitors). The different BBB business sections are headed up, at times, by former employees of the major companies, totally oriented away from new ideas and probably unable to personally succeed anyway under the old ideas. Yet, these people regulate the persons with new ideas, forcing changes often without justification other than to prevent any meaningful competition from developing. A most disheartening problem is that many of the employees of the BBB are truly honest in what they are attempting to do, and do not realize at all the consequences of what they are doing. They merely follow orders and feel that because they are told to do something by the established business interests that it must be right.

Delays occurred in obtaining delivery of new automobiles ordered by Nabcor or its franchisees from factory dealers, which made Nabcor's customers ... (missing)

they made have had of this new way of marketing new automobiles. Dissatisfied customers tell their friends not to do business with Nabcor, thereby causing a loss to Nabcor of "good will" and a large number of customers who ordinarily would have come in without any advertising expense as profitable business based on the good will of Nabcor, assuming it could have been established. Because of the delivery delays and related problems (get ready performance, car cancellations, warranty work) little of the business coming in to Nabcor was produced by a good will factor, which prevented Nabcor from becoming a profitable business. Good will represents the estimated value of business which is expected to come in without any further advertising, based primarily upon word of mouth publicity by satisfied customers (and to some extent by the lingering effects of past advertising, the cost of which has already been deducted on the books and records of the company).

Delays, refusals or arguments with Nabcor customers in obtaining warranty service from franchised dealers on new car purchases from Nabcor caused serious problems for Nabcor. These events occurred even though the manufacturer and each dealer (under their franchise agreement) were obligated to perform the warranty work. This anti-competitive activity by some of Nabcor's competitors (certain factory dealers) further demoralized Nabcor's comparatively few customers with a consequent loss of good will and the profit potential represented thereby.

Further loss of prospective customers and good will resulted from Nabcor's inability to obtain customer financing from banks and other financial institutions. Some of these financial organizations bowed down to dealer association, dealer or manufacturer pressure, and may even had heard dealers' stories about Nabcor's inability to obtain or service new cars (based of course on illegal conduct by certain dealers and the manufacturers).

Nabcor spent a lot of valuable management time on, and incurred expenses in, making telephone calls and trips to motor vehicle bureaus, consumer fraud bureaus, offices of attorneys general, and offices of Nabcor's attorneys in various places, to iron out difficulties caused unlawfully with these governmental agencies, by dealers, dealer associations, newspapers and others.

Nabcor spent a lot of time and money making frequent trips to court

(line missing)

property interest (franchise) in the Nabcor System by the illegal activities described above and below, and demanded their franchise fee back from Nabcor as the quickest remedy for their own problems. This demoralization and defection of Nabcor franchisees resulted in the loss of (i) a substantial amount of good will by Nabcor; (ii) money in defending the franchisee claims and suits and paying refunds and damages; (iii) moneys and time spent in training and selling the former franchisees; and (iv) prospective revenues from the franchise operations which had defected or merely gone out of business.

Nabcor franchisees went out of business and sued Nabcor because of demoralization often attributable in part to illegal actions in the franchisee's locality. Nabcor was unable to cope with all of the problems occurring simultaneously in the numerous franchise areas, which problems all resulted from illegal actions. Nabcor's promised role in assisting its franchisees was reduced in proportion to the unlawful tampering with the Nabcor System, which problems were not contemplated by the franchise agreement with Nabcor's franchisees. These problems resulting from defendants' and co-conspirators' illegal activities took the time and resources of Nabcor and its top management. By the illegal activities complained about, Nabcor was forced into a time and expense structure which it could not afford and which prevented Nabcor from concentrating on its business of marketing new automobiles at discount prices to a public which demonstrated a strong desire to buy new automobiles made by General Motors, Ford, Chrysler and American Motors. By making the deal too costly for Nabcor, Nabcor was effectively stopped by its competitors and their co-conspirators.

Other problems arose for Nabcor as well, caused by dealers and dealer associations, involving warranty work refusals, refusals to supply cars, late car deliveries, cancellations of car orders. All these problems contributed to the time and capital structure forced upon Nabcor. Nabcor's capital commitment was geared to a lawful business operation and not to a 7-year battle against the unlawful practices of defendant automobile manufacturers, established dealerships, dealer associations, newspapers, BBB's, banks, and other financial institutions, motor vehicle personnel tied in with the dealerships and others.

Because of these added burdens in terms of management and employee time and the added expenses needed to combat these illegal activities, Nabcor
(line omitted)
business to get the Nabcor System going on a recurrent, break-even or profitable basis, if it was at all possible (because of the illegality of the fleet and warranty arrangements by the manufacturers in concert with their dealerships). If Nabcor had sufficient capital to get its business going without interference in 1 or 2 years (by January 1967 or

January 1968), the illegal interferences have extended the period to more than 7 years — up to and including February 26, 1973 (the 3rd Colonial Cadillac incident — see ¶ 41(1) of the Affidavit of Frank Maiorana in support of plaintiff's motion for a preliminary injunction.

Nabcor could not keep up the morale of its management, salesmen, and employees in view of the difficulties Nabcor was having from all sources. If Nabcor had been making money from the sale of new automobiles, everyone in the Nabcor System would have been making more money too, which would have allowed Nabcor to attract and keep good people. But Nabcor was losing money in its automobile business, which demoralized Nabcor's employees because they were able to earn less as a result, and the better people left Nabcor for higher paying jobs. The remaining people (not as qualified as some of the others who had left) moved into higher positions. Nabcor was forced into paying additional training expenses and spending additional management time advertising for, interviewing, selecting, training and supervising new key sales and administrative personnel because of the increased turnover of personnel resulting from the demoralization caused directly by the illegal activities of defendants and the co-conspirators.

These problems destroyed Nabcor's prospects for obtaining good will. Nabcor, when it started out, was able to obtain cars for its customers through franchised and factory-owned dealers, according to promised delivery schedules, at lower prices, with minimal or no trouble. This allowed Nabcor's franchisees to obtain the cars ordered for their customers. But the difficulties which were heaped upon Nabcor by defendants and co-conspirators cost Nabcor and its franchisees a substantial amount of time and money. The franchisee problems created by the illegal activities caused the franchisees (most of whom were unsophisticated in the automobile business) to look to Nabcor as the source of difficulty when in fact the problems were being caused by defendants and co-conspirators, unknown to Nabcor's franchisees in many cases.

III. HOW ILLEGAL ACTIVITIES AGAINST A NABCOR FRANCHISEE ADVERSELY AFFECTED THE FRANCHISEE, NABCOR AND OTHER NABCOR FRANCHISEES

In a system so established and monopolized for so long a period of time as the automobile distribution system, people have a tendency to become suspicious of any new and unfamiliar sales approach to a product so necessary as the automobile, regardless of the need for improvement in the conventional sales methods.

Generally, automobile salesmen employed by regular franchised dealerships are hostile to new, competing methods of marketing new cars, and will advise customers and prospects of the dire consequences of dealing with these new and untried methods.

This necessitates great perseverance by the operators of a new business such as a Nabcor franchise. Great pains had to be taken to assure customers of the Nabcor franchisee that the services are in fact better and cost less, and the customer must be told every advantage to be expected by dealing with the Nabcor franchisee. Also, the franchisee must be able to learn how to cope with the problems ordinarily to be expected from tough competition, including techniques such as "low balling" and "high balling" (i.e., quoting misleading prices), to name only a few gimmicks in the automobile sales field.

Such effort requires a special type of individual, one who is willing to accept challenges and endure certain hardships associated with starting a new (franchised) business.

Morale is very important, to the success of these individuals.

Since many of these Nabcor franchisees were venturing into business for the first time, certain adjustments had to be made, and it was normal for doubts to present themselves (similar to the doubts a first-year law student entertains when contemplating the enormity of the work load he has undertaken).

In such a situation, every success becomes a victory and every failure, regardless of how small in the eyes of others, becomes a catastrophe to the Nabcor franchisee. When the franchisee enjoyed a success (a sale or a profit) he was prone to exercise greater effort which in turn produced more successes. He would more often than not tell his friends, family and business (line missing)

encouraging to them and moved them to strive harder and enjoy greater results themselves or give more encouragement to the franchisee (especially his family as long as they believed in what he was doing). The process could be expected to repeat itself and infect the entire organization with team spirit. All persons benefit by this, and even the weakest members of the Nabcor System would be stronger and have a much greater chance for success.

In such situations, the heads of the franchised organizations have more time and resources available to further improve the franchised business to further benefit each member of the team. Such situations are attractive to others who are not members of the organization and people who are anxious to enjoy success themselves are more likely to join a winning organization than one which is not. The addition of more members expands the organization which in turn will enjoy even greater acceptance.

This acceptance would remove any lingering doubts about the Naboor System or product, and increase sales and profits for all members of the organization.

This enthusiasm and team spirit have a definite value, and every organization which has it will spend large sums of money to maintain it (by devices such as sales contests, free trips, bonuses and awards to achievers). Those organizations which don't have the enthusiasm and spirit will do whatever is necessary to motivate their men to greater achievements.

The reverse is true once an organization becomes stagnant:

Men become disgruntled and the better men leave for better opportunities. Others find fault with things which would not have disturbed them under other circumstances.

By not achieving business increases, management is likely to lose the respect of the employees and other members of the management team. Desperate measures are taken and this often worsens the situation.

In time, only the weakest men remain and some of these gain

(line missing)

Such an organization is doomed to mediocrity and all the members of such organization are damaged to the extent that the lack of sparkling performance destroys confidence and acceptance of the organization and its services or products. This results in lower income and profit for all the members of such organization. The effect of the illegal activities is similar to the effect of business libel upon a business: the business suffers a loss in a variety of ways many of which are difficult to prove, because it is difficult to prove which persons would have made a purchase in absence of his hearing the libelous material. Also, the business which is demoralized by illegal activities has something similar to business libel working from within, where the effect can be seen more readily and causes a lowering of output on the part of the demoralized personnel, many of whom use company time and resources to find employment elsewhere, causing a further loss to the organization.

In an organization such as Nabcor which was attempting to grow and gain acceptance for its products and services, the incident in Buffalo, N.Y. at Paul Batt Buick was a disaster for all the members of the Nabcor organization. The loss to each member was immeasurable for the following reasons:

The structure of the Nabcor organization at that time was such that the existing Nabcor franchisees were already disenchanted because of prior abuses on the part of the defendants and co-conspirators (activities of an illegal nature ratified and adopted by any future co-conspirators who joined the conspiracy).

The Nabcor Master Broker Plaintiff Dale Strimple (General Auto Sales & Leasing Corp.) was an experienced automobile man. His partner, Don Bolling, was also a young and aggressive automobile man. Their enthusiasm was a valuable addition to the Nabcor organization.

The successes they could have achieved would have been a valuable motivating factor for all the franchisees in the Nabcor System, and could have been a model for the Nabcor System, particularly because of the expertise which Messrs. Strimple and Bolling brought into the franchise business. If the business was workable at the franchisee level, these two persons should have been able to make it work. And they would have been able to do so, (line omitted)

Increased sales by them would have created credibility and acceptance for the Nabcor System, for the benefit of all Nabcor franchisees.

Many people were waiting for Dale Strimple to prove he could deliver cars before they would order one for themselves.

The failure of Paul Batt Buick to deliver the car to Strimple when requested, after the customer was told the car was ready for delivery in Buffalo, created a serious doubt in the minds of customers and others about the ability of Dale Strimple to deliver any cars at all. Many of these people went back to the manufacturers' franchised dealers and bought cars there instead, thinking that the Nabcor System was an unworkable deal (presumably because the manufacturers had the right at law to prevent their dealers from selling cars to Nabcor - an erroneous presumption but one which an unsophisticated public could readily make, which went to destroy Nabcor's property interest in its System for the brokerage of new automobiles).

This caused salesmen of factory-franchised dealers to find validity in what they were saying (that Dale Strimple could not get any cars and that he would be stopped by the manufacturers) by referring them to the people who had been exposed to that particular incident (the Paul Batt Buick incident).

The lost sale created more lost sales. Other Nabcor franchisees in other cities learned of this and further lost confidence in the Nabcor System. This placed a great burden on Nabcor and forced Nabcor to spend a great deal of time and money in defending its System and to try to get relief for its franchisees so that they could again have the incentive to work under the Nabcor System.

Time and effort which could have been applied to developing and improving the Nabcor System was spent defending it instead.

The injury to plaintiffs General Auto Sales & Leasing Corp. and, as a direct consequence, to Nabcor and all other franchisees in the Nabcor System, was immediate and irreparable.

A. People who would have joined the Nabcor System did not.
B. Some of the people who were members of the Nabcor System left.
C. It destroyed any incentive for franchisees and their employees to work hard for sales because of the uncertainty of delivery.
D. The fact that Paul Batt Buick did subsequently deliver a new

Buick to Dale Strimple for his customer did not make that customer a happy and satisfied customer. It created an individual who had had a bad experience with the Nabcor System, which those who wanted to destroy the Nabcor System could point to, as evidence of the truth of their negative statements about the Nabcor System.

It was not the loss of one customer, but the destructive effect that the incident had on the morale of the members of the Nabcor System, and the consequent undermining of the efficiency of the Nabcor System, resulting in the reduction of business; also, it resulted in the loss of good will of a customer who because dissatisfied as a result of the illegal activities (unknown to him to be illegal, presumably) who went back and voiced his dissatisfaction to other persons who were to hear about Nabcor for the first time from this dissatisfied customer. Thus, Nabcor and its franchisees were suffering a loss in the value of their business and property (the Nabcor franchise system for the distribution of new automobiles at discount prices) as a result of this action and the result of similar actions by other persons who were involved in the conspiracy to stop Nabcor and its franchisees.

IV. HOW FAILURE OF FRANCHISOR AFFECTS FRANCHISEE

The franchisee depends on the franchisor for development, improvement, training and supervision relating to the basic business system *i.e.*, relating to the recurrent features, including sources of supply of cars, warranty work, customer financing and insurance, forms, sales techniques and other features of the business, as described above in Part I

(¶¶ A-J). The various aspects of the Nabcor System are developed centrally, by a single organization (Nabcor), to take advantage of the expertise of Nabcor's top management and lower the developmental costs (by avoiding overlapping developmental costs). Any local developments can be reported back and considered for overall adoption by Nabcor. Without Nabcor, the Nabcor franchisee would have been unable to go into the business of marketing new automobiles (particularly where the only persons marketing new automobiles at that time are the factory franchised dealers). The franchise fee paid for the Nabcor business system enables the franchisee to avoid the staggering cost of trying to develop the system by himself (although some ex-Nabcor franchisees have tried, after learning the system from Nabcor), assuming the franchisee had the requisite expertise, motivation and capital.

By diverting the time of management and capital of the company away from its voluntarily chosen activities of marketing new automobiles (an activity which Nabcor knows best) into a defensive, non-productive operation of learning about and dealing with illegal activities, the primary resources of Nabcor (its top management and its capital) were diverted unlawfully, and the length of time and capital it would ordinarily have taken to get the system on a break-even basis (if at all possible in light of the manufacturers' continued refusals or participations in refusals to deal in the area of warranty work and fleet purchasing) deprived franchisees of the continuing services (discussed at length in Part I) to which they were entitled from Nabcor, under the franchise agreement. These continuing services, as outlined in the various Nabcor franchise agreements, include:

1. supplying specific makes and models of new automobiles on a timely basis to fill orders by brokers therefor;

2. supply training in management, administration, solicitation, financing, leasing, insurance and used-car wholesale;

3. supply all forms;

4. supply basic bookkeeping procedures and forms;

5. supply purchase agreement forms;

6. supply wholesale price lists;

7. supply leasing information and assistance;

8. supply registration information and forms;

9. provide assistance in programming and advertising;

10. provide consultation and give expert advice on business matters;

11. provide new cars at established fleet prices plus transportation;

12. provide assistance to (i) an Area Broker in establishing Brokers within his territory and provide necessary contracts; and (ii) a Master Broker in establishing Area Brokers and Brokers within his territory and provide necessary contracts.

13. provide complete training program, including continuing training seminars from time to time;

14. handle lease-purchase agreements for Master Brokers, Area Brokers and Brokers.

Because the Nabcor franchisees knew far less about the business than Nabcor's management, the franchisees could not cope with the increasing demands on them caused by the illegal activities, and became more dependent in fact on Nabcor. As a result of these increased pressures and demands on Nabcor, Nabcor was less able to perform in the 13 contractual areas outlined above and the franchisees were thereby cut off from the amount of continuing support services they needed to build their business (or stay in business for that matter), at a time when the need for Nabcor's support services intensified because of the local illegal activity directed against the Nabcor franchisee. Much of the illegal activity occurred without the Nabcor franchisee being aware of it or that the activities he knew about were illegal. Thus, many Nabcor franchisees became demoralized, then left the Nabcor System. Some Nabcor franchisees tried to recover for their losses from the one person they knew -- Nabcor -- irrespective of who at law was actually responsible for their losses. Often they did not know, and did not have enough at stake to find out.

V. HOW THE PROBLEMS OF ONE NABCOR FRANCHISEE ADVERSELY AFFECTS NABCOR

(See discussion under Part II as well.)

Nabcor is dependent on its franchisees for selling new cars, the ultimate business of the franchisees in the Nabcor System. To the extent a Nabcor franchisee succeeds as a franchisee, his business prospers and adds to Nabcor's revenues on a continuing basis with decreasing need by Nabcor to give the franchisee training or other support services. Thus, a prosperous franchisee costs less money for Nabcor to support and produces the highest revenues for Nabcor. A profitable franchisee is a source of profits for Nabcor, and is a valuable property interest of Nabcor.

Nabcor has the need, therefore, of seeing that each of its franchisees becomes profitable as quickly as possible for several reasons:

1. To let quick successes by a franchisee produce greater successes by the franchisee;
2. To avoid demoralization of the franchisee;
3. To reduce Nabcor's start-up costs expended in getting the franchisee operational, a non-recurrent cost to Nabcor if the franchisee stays in business;
4. To develop a continuing royalty income from the sale of new and used automobiles by a profitable franchisee, together with profits from financing, insurance, accessories, warranty work, non-warranty repair work;

5. To develop a franchisee into one of many successful Nabcor franchisees so that the value of each Nabcor franchise will increase (whether the franchise is owned by a franchisee or is to be sold in the future by Nabcor).

Problems affecting a Nabcor franchisee locally become a problem to Nabcor, to whom the franchisee turns for help to solve a difficult problem. To prevent loss and demoralization of the Nabcor franchisee, and to ward off franchisee litigation against Nabcor, Nabcor exerted great efforts to take the lead in resolving local problems which arose.

For example, in Buffalo, where plaintiff General Auto Sales & Leasing, Inc. was cut off by GM, Paul Batt Buick and others, Nabcor's management spent an estimated 200 hours of time (including various trips to Buffalo by Frank Maiorana and Anthony Maiorana) which hours were thereby lost to the business of marketing new automobiles and developing other aspects to the Nabcor System. Appointments had to be cancelled. Responses from advertising run and paid for had to be disregarded. Additional advertising was not scheduled on time. Nabcor personnel were left unattended. But this does not describe all of the adverse effects at Nabcor's office when its top management were taken away on a crisis basis. Much business was lost, by Nabcor's inability to use its top personnel where and when needed. Thus, by forcing top management into handling problems caused by the illegal actions of others, the Nabcor System suffered irreparable injury. Time was lost which could not be recovered, and opportunities passed by, to be grabbed by competitors in the business of marketing new automobiles.

These diversions of the time of Nabcor's top management cannot be compensated for merely by saying that the time of top management has a certain value per hour. Top management's services were unique and were part of the business and property of Nabcor needed to be used as Nabcor saw fit in the orderly development of its business and not to be pulled away to handle illegal activities performed by others. By disrupting Nabcor's System, illegally, Nabcor suffered a loss in the value of its business and property; the business and property became worth less than they would have been worth if no illegalities had been committed. If Paul Batt Buick in fact conspired with GM and others, Nabcor's loss in business value with respect to the actions of each defendant and co-conspirator is the liability of each of the defendants and co-conspirators. The out-of-pocket loss suffered by Nabcor and each of its franchisees is not sufficient because Nabcor and each Nabcor franchisee suffered a loss in the value of its business and its property (the Nabcor franchise). Nabcor's losses included:

A. The loss of franchise fees and royalty income from actual Nabcor franchises;

B. The loss of car customers in various areas who could be expected to learn about the Nabcor System from satisfied customers and others who heard about the successes of the Nabcor System, including employees, friends and associates of car dealers, banks, finance companies, newspapers, BBB's and motor vehicle bureaus;

C. The loss of prospective franchisees in various areas who would otherwise have wanted to become a Nabcor franchisee, which would have increased the value of each franchise. These persons were prevented from hearing about a successful franchise because of the illegal activities which took place, which prevented the anticipated successes from occurring;

D. The loss of automobile financing reserves (kickbacks) because of Nabcor's inability to obtain customer financing from any of the major finance companies, probably because of the illegal activities;

E. The loss of auto insurance rebates;

F. The loss of warranty work;

G. The loss of parts income and non-warranty repair work;

H. The loss of used-car business;

I. The loss of income from the sale of accessories;

J. Loss due to franchisee demoralization and litigation, and non-payment of notes due Nabcor.

The franchisee's loss of these profit opportunities purchased by them as a franchise package from Nabcor was the loss of a valuable property right which could have made the franchisee wealthy, but because of the illegalities which took place, cost the franchisee a loss of his franchise fee, a loss in his own start-up expenses, and just as importantly, the loss of valuable time trying to get started (which includes a loss of alternative profit opportunities). If the Nabcor System had been allowed to grow without having to cope with wholesale violations of antitrust law, franchisees would not have left the System, but would have been well rewarded for their foresight and efforts. Instead, they lost money and became disgruntled.

Disgruntled Nabcor franchisees brought suit against Nabcor, amounting to about 8% of Nabcor's franchisees, with others probably contemplating suit - because of their lack of knowledge of what illegalities had taken place by others to prevent the franchisee from making money as a Nabcor franchisee.

This action against General Motors and numerous others was brought on behalf of the Nabcor franchisees by Nabcor, under its contractual obligation as franchisor to defend the Nabcor System, to recover for the franchisees the losses resulting from the illegal activities and to restore them, to the extent possible, as active, healthy franchisees of Nabcor.

VI. HOW ACTIVITIES DIRECTED AGAINST A FRANCHISEE AFFECT OTHER FRANCHISEES

Activities injuring Nabcor (see Part II above) prevented Nabcor from rendering the full amount of its continuing services to each franchisee under the Nabcor franchise agreement. (See Part IV above for a full description of the continuing services.)

A decrease in value of a single franchise caused by local activity directed against a single franchisee affected the value of the other Nabcor franchisees as well, because of the investigations, made by prospective franchisees, newspapers, Better Business Bureaus, investors and others, of individual franchises before deciding to do business with the franchisor.

The attitude of one franchisee, demoralized by local illegal activity directed against him, affected other franchisees by demoralizing them, too, which in turn demoralized other franchisees (similar to the way business libel can spread and adversely affect an entire business).

The improvements and business contacts which might have been developed by the franchisee are not available for the benefit of the other franchisees, even though the franchisor has spent its time and money working with the franchisee to benefit him and all other franchisees. For example, by working with several franchisees on the development of a used-car system (to sell used cars accepted as trade-ins by franchisees, at higher than wholesale prices) Nabcor was developing for each franchisee a prospect for profit, based on the interaction between Nabcor and the several franchisees.

When a single franchisee is affected adversely, the whole franchise system is adversely affected. A franchise system is comparable to a business with a number of branch offices, with each branch being a separate profit center. Injury by antitrust law violation to any of the branch office businesses would be the basis for recovery for damages occurring in each of the branch offices, with the owner of the branch offices (situated in the principal office of the company) collecting the full amount.

The same amount of recovery should be awarded (in the aggregate to the franchisor and its franchisees) when the same illegal activities are directed against a franchisee in one city. The effect is felt by the franchisor as well as the franchisees in other cities for the same reason franchising is a valuable method of distribution: movement of people and ideas from one city to another, by communications with or among relatives, salesmen, travellers, vacationers, business associates, school mates, businessmen, politicians, attorneys and others who would recommend the Naboor System to persons in other cities if the System worked for them in their own area.

The good will of each Howard Johnson franchisor-owned outlet or franchise is affected precisely the same each time a customer of a franchised or company-owned restaurant is dissatisfied in any area of the country, which is why the franchise or licensing agreement of certain franchise organizations sets forth stringent control provisions enabling the franchisor to assure quality control of franchised owners and to regulate the use by franchisees of its name and trademark.

A franchised business is similar to a branch office (both are profit centers, distribution points, and dependent on the main office or franchisor for a variety of support services) except that the former is a separate entity, independently owned and financed. Yet, illegal actions directed against a franchisee have the same effect on the franchisor as illegal actions directed against a branch office in one city would have on the absentee owner of the branch office (including all other branch offices), and any recovery should reflect this. The franchisor and all franchisees should, in the aggregate, recover an amount equal to the amount which would be recovered by the owner of the branch office. After deducting special damages proven by the franchisee against liable parties, the remaining amount of recovery (based on the theory that a co-conspirator is liable for all the acts of the others in the conspiracy) should be divided between franchisor and all franchisees. This should be determined by reference to the percentage of the overall market for which a franchisee is responsible to develop and a division of the profit potential for the territory, based upon the allocation of gross profits in the franchise agreement (similar to the way a lessor and lessee divide (line missing)

The franchisee has a business protected by the antitrust laws, but he has protection for a property interest as well - his franchise. Loss in value of his franchise is a loss in value of his property for which he has a right to recover under the antitrust laws. The franchisor has given the franchisee an exclusive right to conduct business under the franchisor's name using the franchisor's know-how and continuing expertise - in a certain area (called the franchisee's territory). To the extent of this grant, the franchisor is foreclosing its own exploitation of the territory. The right of a Nabcor franchisee to sell new cars using the Nabcor name and system in the assigned territory is a valuable property right, which franchisees have paid Nabcor up to $50,000 to obtain. Although the franchisor has assigned an interest in the territory, the franchisor has a continuing interest in the franchised business. The franchise agreement requires that the franchisee perform certain acts in furtherance of the Nabcor System, including the following:

1. Engage in the business of brokering new and used automobiles;
2. Establish a network of Brokers and Area Brokers (applicable to Master Brokers and Area Brokers only);
3. Sell a minimum quota of cars during a stipulated period;
4. Master Broker is to set up his operation to handle lease-purchase agreements itself;
5. Master Broker agrees to supervise, train, handle supply and delivery of all purchases by its Area Brokers and Brokers;
6. Master Broker will arrange for and provide new cars at established fleet prices, plus transportation, plus Nabcor distributor fee of $50 (subject to increase if justified by increased costs);
7. Master Broker will engage in no other business other than the one presently engaged in;
8. Master Broker will accept assignment of all Area Broker and Broker franchises and honor all terms of the agreements;
9. Franchisees will not disclose trade secrets or know-how.

Any loss of performance by a franchisee under his franchise agreement resulting from illegal activity gives the franchisor a cause of action for the unlawful interference with the franchisor's right to performance under the franchise agreement.

Also, each franchisee has an interest in every other franchise. The value of a franchise depends in part on the number and percentage of successful franchisees in the System. A franchisor with only one franchisee probably may have a long way to go before making his franchise system viable. The franchisor's costs to maintain one franchise may be exceedingly high. Fixed administrative costs should be allocated over a larger number of franchises to enable the franchise system to be profitable. Nabcor has sold more than 200 franchises and was well under way to establishing a competing system for the distribution of new automobiles in the United States, which would have given Nabcor and its franchisees more strength in automobile purchasing, financing, insuring and repairing, and in national advertising, therefore a greater profit potential. Also, Nabcor would have had more money for product-service development and improvement.

Distribution problems affecting a multi-branch business are the same as the problems affecting a franchisor trying to find the least expensive way to distribute a product or service. Therefore, the same basis for recovery should be granted to the entire franchise system, to be divided among the franchisor and franchisees as their respective interests may appear. The franchise aspect of Nabcor's business is only a method of marketing and it leaves to Nabcor development and performance of the essential aspects to the automobile business, on which the franchisee is vitally dependent. Thus, the profit potential of a given franchisee is dependent on the well-being and successes of the franchisor including the franchisor-owned outlets and the other franchisees in addition to himself; and a tampering with one party to a franchise system creates liabilities to the others, particularly where the activities are part of a conspiracy to restrain trade.

Possibly [illegible] Conspiracy Claim.

Schedule A, Plaintiffs' Answer to
Interrogatories

SCHEDULE A

HOW ACTIVITIES DIRECTED AGAINST BARCOR OR A BARCOR FRANCHISE ADVERSELY AFFECTS BARCOR AND ALL OTHER FRANCHISEES.

I. HOW A BUSINESS IS STARTED

This answer by plaintiffs to Interrogatories 15, 16 and 17 to "Second Set of Interrogatories with Request to Produce Documents" has been prepared on the assumption that some persons reading this answer may not have a business background and, therefore, may be able to use an explanation of certain basic business principles to be able to more fully understand the bases for plaintiffs' claims for damages.

A person (let's call him an "entrepreneur") who wants to make money (i.e., "profits") by going into business usually has only a comparatively small amount of capital available for the business venture (for argument's sake let's assume $10,000). If the entrepreneur selects a business activity which is old, well-established and competitive (such as the operation of a gas station) it should be comparatively easy to commence the business, but the return on invested capital will be limited by the competition (let's say to an assumed 15% return before taxes). Thus, the entrepreneur may be able to expect a 15% return or profit each year (over and above his own compensation as officer or employee of the Company, which position he presumably could obtain elsewhere without the capital investment if he tried hard and long enough) on his $10,000 --- or a pre-tax profit of $1,500. (Of course, if he left his money in a bank, it would draw 6% interest anyway, so that the additional return on his invested capital in the gas station would be only 9% or $900 per year in excess of what he could have done if he (a) left his $10,000 in a bank to draw a safe 6% interest; and (b) found a similar position in somebody else's company.

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EX. 4
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[illegible] REPORTING SERVICE

To be able to derive a profit on invested capital in excess of the $900 per year, an entrepreneur often tries to start a business based on a comparatively new, non-competitive concept, which will allow him to charge higher amounts for the product or service than could be charged once the business activity becomes competitive. This non-competitive aspect to his new business may enable the entrepreneur to earn profits in excess of the $900 and be able to attract needed venture (risk) capital and good men to the business -- all because of the high profit potential underlying the idea during its emergence as a new business in a comparatively non-competitive area. Once competition comes in, which is bound to occur in a competitive or semi-competitive market for the placement of venture capital, the entrepreneur's growth rate is cut back by the forces of competition. Therefore, it _is of the utmost urgency_ for the entrepreneur to get his new business going on a profitable basis as fast as possible, and to maximize his share of the prospective market before the competition (with greater amounts of available capital) start moving in to dominate the new industry.

To start such a new business, however, is unlike starting a gas station or restaurant, where the business routine (including suppliers, pricing, forms, agreements, advertising, sales promotion, equipment) required to earn average profits in the industry are not difficult to imitate. In fact, certain suppliers (of gasoline and related products) are anxious to do all the spade work for the new businessman, often by making the businessman a franchisee of the supplier.

In a new business based on a new idea, however, the business system required to be established has no predecessor, by definition, and it is up to the entrepreneur (usually the top officer of the new enterprise) to try out a variety of different business combinations. The different elements of the ultimate business system of Nabcor are set forth immediately below, and represent the business and property of Nabcor which defendants and others unlawfully interfered with:

A. INITIAL ACTIVITIES:

1. Formulating the idea;
2. Investigating the legality and practicality of alternatives;
3. Incorporating and naming the business;
4. Obtaining trademark protection;
5. Putting together and training the original management group;
6. Establishing bank accounts and bank references;
7. Setting up various offices in various cities (Yonkers, New York, N.Y., Philadelphia, Jenkintown, Pa., and Washington, D.C.)
8. Obtaining a license as a new automobile dealer.

B. FINANCIAL PLANNING AND ACTIVITIES:

1. Performing market research and preparing projections on the sales potential for Nabcor and each of its franchisee categories (Master Broker, Area Broker and Broker);
2. Determining the anticipated expense structure of Nabcor and each of its categories of franchisees;
3. Planning to keep the expense structure as low as possible for a franchisee to be made as competitive as possible with other systems (whether or not in existence) for marketing new automobiles to retail purchasers;
4. Determining the amount of capital needed to start the Nabcor System.
5. Arranging for the initial equity financing of Nabcor;
6. Arranging for various interim financings of Nabcor;
7. Holding meetings and discussions with various persons possibly interested in investing in Nabcor on a private placement basis;
8. Attempting to raise money by a public intrastate offering in Pennsylvania;
9. Arranging for a public interstate offering of securities

10. Preparing the documentation, over a 1-year period, required by the Securities and Exchange Commissio to enable Nabcor to make a public offering of securities.

C. PERFECTING THE BASIC NABCOR SYSTEM:

1. Holding discussions with automobile dealers and salesmen, financial men, attorneys and prospectiv customers of the Nabcor System;

2. Performing factual and legal research to determine ho new cars are sold exclusively by manufacturers' franchisees;

3. Performing factual and legal research to determine ho new cars may be sold legally by a non-franchisee of the the automobile manufacturers;

4. Investigating motor vehicle laws and practices of motor vehicle departments:

5. Travelling overseas to look for franchises for foreig trucks, automobiles and other motorized vehicles;

6. Determining the method by which Nabcor and its distributors should be compensated for new and used cars sold by or through them;

7. Determining the markup over cost at which cars can be sold profitably through a brokerage system;

8. Formulating a program for the separation of sales fro service in the sale of new automobiles;

9. Preparing price lists for new automobiles;

10. Preparing forms for use in the Nabcor system, including:
    (a) order forms
    (b) invoices
    (c) accounting forms
    (d) non-disclosure forms
    (e) report forms

11. Preparing many drafts of various franchise agreements to reflect the Nabcor System at each stage of its development;

12. (For other aspects to the Nabcor System, see Item H below.)

D. PERSONNEL:

1. Advertising for, interviewing, hiring, training and supervising key personnel and substitute key personnel when key personnel left the Nabcor Syste (because of their inability or unwillingness to cope with the problems created by the illegal activities of others directed against the System);

2. Advertising for, interviewing, hiring, training and supervising sales and administrative employees and their replacements when the original employees lef the employment of Nabcor (often because of the

added work load and demoralization created by the illegal activities of others directed against the System);

3. Building morale and sophistication in an ever-changing group of key employees and personnel, to attempt to have the Nabcor System become a stable system for marketing new cars, by trying to create and maintain a group of satisfied, competent and loyal key personnel and other employees;

4. Developing and conducting training programs for key personnel and other employees.

E. OBTAINING AUTOMOBILE SUPPLIERS AND FINANCING:

[illegible]

PERSONNEL:

1. Advertising for, interviewing, hiring, training and supervising key personnel and substitute key personnel when key personnel left the Nabcor System (because of their inability or unwillingness to cope with the problems created by the illegal activities of others directed against the System);

2. Advertising for, interviewing, hiring, training and supervising sales and administrative employees and their replacements when the original employees left the employment of Nabcor (often because of the added work load and demoralization created by the illegal activities of others directed against the System);

3. Building morale and sophistication in an ever-changing group of key employees and personnel, to attempt to have the Nabcor System become a stable system for marketing new cars, by trying to create and maintain a group of satisfied, competent and loyal key personnel and other employees;

4. Developing and conducting training programs for key ~~o[illegible]~~ personnel and other employees.

. OBTAINING AUTOMOBILE SUPPLIERS AND FINANCING:

1. Locating and negotiating with franchised dealers of different makes of automobiles in various areas of the country willing to sell new automobiles to Nabcor on a "fleet" or wholesale basis;

2. Locating and negotiating with banks and finance companies in various areas of the country to try to obtain customer financing and Nabcor floor-plan (inventory) financing for purchases of new cars through the Nabcor System - a system unknown to banks and other conservative financial institutions and in possible conflict with the interests of some of their best customers and friends;

3. Locating franchised automobile dealers willing to perform the manufacturer's obligation under its warranty on new cars purchased through the Nabcor System;

4. Investigating the market for foreign cars and possible overseas suppliers of foreign and domestic (U.S.) new automobiles;

5. Establishing a system for obtaining up-to-date prices lists for all new cars manufactured by General Motors, Ford, Chrysler and American Motors.

. NON-AUTOMOBILE SUPPLIERS AND SUPPLIES:

1. Locating satisfactory suppliers for typesetting and printing of various agreements, forms, training manuals, price lists, advertising and sales promotion material;

2. Determining office layout and needed equipment and furniture, and purchasing or leasing the equipment and furniture;

3. Investigating alternative sources of supply, purchasing, trial use, additional purchasing from other sources, additional use, followed by tentative adoption of supplier and supply schedule, based on the three variables of (i) quality, (ii) price, and (iii) service.

. MARKETING PROGRAM - AUTOMOBILES:

1. Establishing an overall marketing program for the sale of new automobiles on a nationwide basis;

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for the marketing of new automobiles by brokers;

3. Preparation of a system for the marketing of new automobiles by automobile brokers;

4. Categorizing and meeting all the objections reasonably to be anticipated by prospective purchasers of new automobiles through the Nabcor System;

5. Preparation of a sales presentation for the sale of a new car by a broker;

6. Working on a computerized quotation system for the mass quotation of new car prices to the public or to Nabcor brokers over the telephone or other terminal facilities.

. DEVELOPMENT OF OTHER ASPECTS TO NABCOR SYSTEM:

1. Formulating and establishing a Nabcor used-car system;

2. Formulating, incorporating and licensing a Nabcor Finance company to afford financing to Nabcor customers;

3. Formulating a system for the performance of warranty work on new automobiles by Nabcor or other non-franchised organizations;

4. Formulating a system for the sale of accessories such as tires, radios, stereo equipment, air conditioning, heaters and other special equipment, by Nabcor and its franchisees with the the sale of the basic new automobile, at prices lower than the prices currently being paid by new-car customers.

5. Formulating a system for obtaining insurance for Nabcor purchasers of Nabcor or Nabcor franchisee [illegible] upon the Nabcor System "insurance" (i.e., [illegible]) when the customer bought his car [illegible] through the Nabcor System.

. SETTING UP THE FRANCHISE DISTRIBUTION SYSTEM OF NABCOR BROKERS:

1. Determining that the marketing of new automobiles could best be done by a franchise system of automobile brokers;

2. Dividing the country into territories for development by (a) Master Brokers; (b) Area Brokers; and (c) Brokers;

3. Preparing drafts of various forms of franchise agreements;

4. Pricing the franchises, which related to the fee to be paid to the Nabcor System by the customers thereof; the market potential for a Broker, and the projected profits of the franchisee;

5. Developing the marketing program for the sale of franchises;

6. Preparation of advertising copy and sales promotional material for the marketing of Nabcor franchisees;

7. Preparation of a sales presentation for the sale of Nabcor franchises;

8. Recruiting, training and supervising franchise salesmen;

9. Preparation of training manuals and other training material for franchisees and their personnel;

10. Interviewing prospective franchisees;

11. Establishing and conducting training programs for franchisees and their personnel to teach them the highly complex and sophisticated automobile business;

12. [illegible] visits and other communications with franchisees as part of their training.

J. DEFENDING THE NABCOR SYSTEM:

1. (Part of Nabcor's involvement in defending the Nabcor System is detailed in Count 1 of the Complaint.)

2. Nabcor had to find substitute franchised dealers as suppliers of new automobiles whenever old suppliers refused to sell or deliver cars to Nabcor;

3. Nabcor had to find franchised dealers willing to perform warranty work, in fulfillment of the manufacturer's obligation to perform service, for cars purchased through the Nabcor System;

4. Meetings with personnel of the Justice Department, Federal Trade Commission, Senate Committees and Sub-Committees, and Congressional Committees to discuss the unlawful interference with the Nabcor System by Defendants and Co-Conspirators;

5. Handling complaints by Nabcor franchisees who had pressure brought upon them by local interests (such as dealers, dealer associations, newspapers, Better Business Bureaus, banks, motor vehicle bureau personnel, state police, attorneys general, district attorneys, consumer fraud bureaus) because the franchisees were not able to understand or cope with the problems because of their relative lack of sophistication in the automobile business and their reliance upon Nabcor to defend the Nabcor System;

6. Telephone calls and travelling to many cities to visit Nabcor franchisees who needed help in establishing their franchises in light of the anti-competitive practices taking place against them in their respective localities;

7. Discussing the Nabcor System with interest groups such as:

    A. Automobile Manufacturers, who refused to allow Nabcor to buy new cars on a fleet basis from their franchised dealers and refused to allow warranty work to be performed on the cars by the franchised dealers.

    B. Newspapers, who refused to let Nabcor advertise new cars or Nabcor franchises;

    C. Dealers, who refused to sell, deliver or service new cars sold through the Nabcor System;

    D. Better Business Bureaus, who were looking into Nabcor's activities at the request and for the benefit of other interest groups (to determine whether Nabcor should be permitted to advertise, for example).

    E. Motor Vehicle personnel and other government officials, who were interested in establishing for the benefit of interest groups that the Nabcor System was illegal.

8. Conferences with attorneys representing Nabcor in various situations referred to in No. 7 above.

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9. [illegible] various suits brought by Nabcor franchisees who blamed Nabcor for their problems,

   (i) out of ignorance of the truth:

   (ii) to avoid the cost and delay of suing the persons actually responsible for any injury to them: or

   (iii) as a shill, who bought a franchise from Nabcor or a Nabcor Master Broker or Area Broker solely for the purpose of bringing suit against Nabcor and undermining the Nabcor System.

10. Discussions of the foregoing 9 problem areas with various attorneys, and preparing for the commencement of this action; and responding to defendants' requests for information and other matters relating to this suit.

After working with the business variables to arrive at the least expensive and most income producing combination, the most profitable system was developed -- which is a combination of the best of the foregoing variables (if a profitable system can be found at all). These trials and errors in developing suppliers, supplies, forms, key personnel, prices, training systems, job descriptions, and advertising copy, to name only a few of the hundreds of unique business decisions which had to be made by Nabcor, were quite costly to Nabcor and substantial sums of money were spent in order to arrive at the final combination (with no guaranty of profitability whatever).

In many cases, the amount of venture (or risk) capital available to the entrepreneur will be sufficient to pay for the expenses of developing the business long enough for the entrepreneur to find the proper business system -- possibly within a 3-6 month period, or say even a 1-year period. But if the capital available is insufficient to cover the developmental period of the business, the company will go under because of a "shortage of capital", even though the business could have been developed on a profitable basis if given a longer period -- say a 30-year period (such as in the business of running a lumber mill where the key idea is to grow trees as a captive source of raw material for the mill). Assuming the same degree of competence of management, the length of time it takes to develop a profitable business depends on the nature of the business. Thus, some businesses can become profitable in a month, others in a year, and others never at all.

All of these trials and errors of the entrepreneur used in coming up with a workable business system necessitates developmental expenses for the company which are "non-recurrent". Once the system has been developed to the point of breaking even, no further developmental expenses are needed to allow the business to survive indefinitely in the present market structure (and management is not under the same degree of urgency to make the business more efficient).

These non-recurrent "start-up" costs are capital costs. These start-up costs are often capitalized (as "intangible assets") and amortized as an expense of the business (i.e., "written off" as a deduction from the business income) over a period of years, say 3 to 5 years, until the costs of development have been fully deducted from business income over the 3-5 year period. ¶ Another way of thinking about the start-up costs of a new business is to consider how much money it takes to put together a new automobile -- the costs of putting the first 1974 Chevrolet might be $100 million, even though every additional 1974 Chevrolet might have a "relative cost" or "out-of-pocket" or ~~"[illegible]"~~ "variable" or "unit" cost of the manufacturer amounting to $500 or perhaps as much as $1,000. Part of the amount charged in excess of the relative cost (the "gross profit") is needed by the manufacturer to offset the $100 million capital (non-recurrent) expense in getting set to mass-produce the new model, and the rest of the gross profit goes to pay overhead and sales expenses and to provide a net profit for the manufacturer.

The length of time it takes a new company to reach its break-even point is crucial to the continued existence of the organization, for 2 major reasons:

1. The capital costs necessarily continue until the business reaches its break-even point; and

2. Competition will enter the new industry, to reduce the market percentage and profitability of the entrepreneur's new business.

Until the business reaches its break-even point (when the business activities are recurrent because they have been systematized on a break-even or even a profitable basis) the expenses in continuing to develop the system (i.e., to find the right combination of business methods) are non-recurrent (i.e., capital) and have to be paid by the entrepreneur out of his own pocket, if he has the additional money (which he often does not have), particularly if he has been in previous (unsuccessful) ventures to obtain the kind of business experience he needs to make this particular business opportunity successful.

During the development of the business, the start-up expenses (including the regular overhead expenses which must be paid as a capital expense before the business becomes operational on a business established throws off enough gross profit to cover the overhead) are not being covered by any ~~any~~ gross profit or a sufficient gross profit because of lack of an adequate sales volume during the start-up period.

Thus, the length of time the entrepreneur can hold out while developing his new business is directly related to the amount of capital available to him. The more capital he has, the more mistakes (i.e., non-recurrent developmental expenses) the entrepreneur can make and the longer he will be able to hold out until his business becomes break-even or profitable ~~[illegible]~~ (if it ever does), and any future developmental expenses are covered by the gross profits of the business. ~~[illegible]~~

If a person has just enough capital to get a business going on a break-even basis, his capital will be completely consumed by his business ~~just~~ at the point in time when the gross profits of his business just cover the overhead. This gives the entrepreneur time to improve various aspects of his business (not on a crisis basis under time pressures) to be able to produce net ~~[illegible]~~ profits for the entrepreneur and any investors.

II. HOW ILLEGAL ACTIVITIES AFFECTED NABCOR'S BUSINESS

Anything which interfered unlawfully with [illegible]'s development of the Nabcor System was an unlawful interference with the business and property interest of Nabcor and its franchisees in the developing Nabcor System. Each interference with the elements of the System interrupted the System's development to such extent and necessarily extended the time and/or diverted the capital needed to promote the System, which in the aggregate turned out to be fatal for the company by (i) causing the company to run out of money unnecessarily before the business reached its break-even point; and/or (ii) giving competition an earlier start (in relation to Nabcor's stage of development) to take away franchise sales opportunities and new-car business (i.e., market percentage of a 9,000,000 to 10,000,000 new-car annual market) from Nabcor. Illegal activities which (i) caused delays in, or prevented Nabcor from, developing its business and (ii) added unnecessary expenses (hence diverted Nabcor's capital resources from the intended applicati are described and their effect explained in the paragraphs below.

A business which cannot advertise in media of its choice cannot sell its products or services in a free market as it choose to do, and therefore may not be able to produce sales at a reasonable sales expense. The effect is to prevent the business from obtaining a gross profit on sales to pay overhead expenses and produce a net profit as well. Also, the Nabcor System (Marketing Program) must be changed to reflect Nabcor's inability to sell cars and franchises through its medium of primary choice, and forced Nabcor to try selling cars and franchises in less effective ways, thereby causing losses.

Delays were programmed for Nabcor by newspapers which stopped Nabcor's newspaper advertising just at the time Nabcor decided it needed to advertise. Nabcor was dependent on the ordered advertising to assist in the sale of franchises and automobiles. The delays or refusals to accept Nabcor's advertising resulted from defendant newspapers' unlawful concern for Nabcor's competitors (including major advertisers of new automobiles in the newspapers), by repeated requests for confidential business information about Nabcor until the newspaper either wore Nabcor out, Nabcor refused to supply the requested information (such as a list of all Nabcor's franchisees), or ~~[illegible]~~ Nabcor spent 8-9 months providing the requested information after which the newspaper refused to permit the advertising anyway (by prior decision, thereby causing a tremendous dislocation of resources by Nabcor, attempts to [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

This type of activity by a newspaper is usually rationalized to the public (when called upon to do so) as evidence of the newspaper's concern for the "well-being" or "protection" of the public; the truth is, however, that the newspaper is willfully preventing price competition and is willfully assisting in the fixing of high prices for the public.

Nabcor's management wasted a lot of valuable time and less acceptable alternatives for advertising because of the fact that defendant newspapers required from Nabcor more information and qualifications than they required of their old advertisers, as an excuse to "justify" their decision to refuse Nabcor advertising, which acted as an illegal restraint upon the legitimate attempts of Nabcor to go into business and incidentally, made it less desirable generally for other prospective businessmen to become competitors in various areas of business. If persons going into business are doing something illegal, city, state and federal authorities should be capable of handling the matter; and in any event the matter should not be handled by the competitors of the prospective advertiser (including their agent - the newspaper), who have very little interest in seeking his idea become a business reality. The competition being unlawfully restrained by the newspaper in many instances is the competition for advertising space to influence the discretionary spending habits of the newspaper's readers, and not just the direct competition of a major advertiser in the newspaper.

Delays in obtaining advertising approval often occur because the newspapers and other media (such as radio and television) will turn over proposed advertising copy to the local Better Business Bureau (a private organization with branch offices or franchises in most cities, funded for the most part by contributions of, and controlled by, major advertisers, major media and banking institutions, and obtaining public acceptance by free radio advertising extolling the virtues of the BBB's, treated as "public service messages" therefore paid for by the public which is being harmed by the BBB); the BBB's review agreements, forms and other aspects to the newcomer's business, as well as the proposed advertising copy, at the request of the media or competitors, to try to find something -- anything -- possibly misleading or illegal under state or federal law in the opinion of the non-lawyer laymen employed by the BBB (which might be considered the unlawful practice of law by the BBB, if anyone wanted to make the charge) and reporting the BBB's opinion on the alleged illegality to the inquiring media or competitor (who helped to finance this advertising review activity in the first place); this same review does not take place with respect to new products or services of old advertisers, particularly full-paid members of the BBB, which makes it [illegible] for a person going into business to first join the BBB, then have unquestionably acceptable business activities (such as opening a hot dog stand) then start advertising hot dogs; later, after establishing the hot dog stand, he should go into the desired business activity, and he probably will not have to go through the same screening given to persons who start off in business doing something different hence competitive. This practice of regulation of the newest competitors by the established competition is one of the key methods of preventing unsuspecting persons from going into business and should be permanently enjoined. The power of regulating who can advertise and who cannot should be turned over to an impartial governmental agency (such as the district attorney's office).

The BBB demands the innermost secrets of a new businessman (secrets which if given directly to competitors would be an antitrust violation) but as long as the secrets are demanded by the competitors through their BBB organization, it is OK, apparently. Well plaintiffs think not. In fact, the BBB reviews the agreements and tells the new businessman what changes the BBB (including representatives of competitors, media and banks) want in the agreement (presumably to conform to the established way competitors do things, to prevent the newcomer from rocking the boat for the others). These changes have to be made as a practical matter, as a condition to getting BBB approval to advertise in the media (who, it should be remember, are in partial control of the BBB and set up this system of review by competitors). The different BBB business sections are headed up, at times, by former employees of the major companies, totally oriented away from new ideas and probably unable to personally succeed anyway under the old ideas. Yet, these people regulate the persons with new ideas, forcing changes often without justification other than to prevent any meaningful competition from developing. A most disheartening problem is that many of the employees of the BBB are truly honest in what they are attempting to do, and do not realize at all the consequences of what they are doing. They merely follow orders and feel that because they are told to do something [illegible] that it must be right.

Delays occurred in obtaining delivery of new automobiles ordered by Habcor or its franchisees from factory dealers, which made Habcor's customers they made have had of this new way of marketing new automobiles. Dissatisfied customers tell their friends not to do business with Nabcor, thereby causing a loss to Nabcor of "good will" and a large number of customers who ordinarily would have come in without any advertising expense as profitable business based on the good will of Nabcor, assuming it could have been established. Because of the delivery delays and related problems (get ready, performance, cancellations, warranty work) little of the business coming in to Nabcor was produced by a good will factor, which prevented Nabcor from becoming a profitable business. Good will represents the estimated value of business which is expected to come in without any further advertising, based primarily upon word of mouth publicity by satisfied customers (and to some extent by the lingering effects of past advertising, the cost of which has already been deducted on the books and records of the company).

Delays, refusals or arguments with Nabcor customers in obtaining warranty service from franchised delears on new car purchases from Nabcor caused serious problems for Nabcor. these events occurred even though the manufacturer and each dealer (under their franchise agreement) were obligated to perform the warranty work. This anti-competitive activity by some of Nabcor's competitors (certain factory dealers) further demoralized Nabcor's comparatively few customers with a consequent loss of good will and the profit poential represented thereby.

Further loss of prospective customers and good will resulted from Nabcor's inability to obtain customer financing from banks and other financial institutions. Some of these financial organizations bowed down to dealer associations, dealer or manufacturer pressure, and may even had heard dealers' stories about Nabcor's inability to obtain or service new cars (based of course on illegal conduct by certain dealers and the manufacdurers).

Nabcor spent a lot of valuable management time on, and incurred expenses in, making telephone calls and trips to motor vehicle bureaus, consumer fraud bruceaus, offices of attorneys general, and offices of Nabcor's attorneys in various places, to iron out difficulties caused unlawfully with these governmental agencies, by dealers, dealer associations, newspapers and others.

Nabcor spent a lot of time and money making frequent trips to court property interest (franchise) in the Nabcor System by the illegal activities described above and below, and demanded their franchise fee back from Nabcor as the quickest remedy for their own problems. This demoralization and defection of Nabcor franchisees resulted in the loss of (i) a substantial amount of good will by Nabcor; (ii) money in defending the franchisee claims and suits and paying refunds and damages; (iii) moneys and time spent in training and selling the former franchisees; and (iv) prospective revenues from the franchise operations which had defected or merely gone out of business.

Nabcor franchisees went out of business and sued Nabcor because of demoralization often attributable in part to illegal actions in the franchisee's locality. Nabcor was unable to cope with all of the problems occurring simultaneously in the numerous franchise areas, which problems all resulted from illegal actions. Nabcor's proposed role in assisting its franchisees was reduced in proportion to the unlawful tampering with the Nabcor System, which problems were not contemplated by the franchise agreement with Nabcor's franchisees. These problems resulting from Defendants' and Co-conspirators' illegal activities took the time and resources of Nabcor and its top management. By the illegal activities complained about, Nabcor was forced into a time and expense structure which it could not afford and which prevented Nabcor from concentrating on its business of marketing new automobiles at discount prices to a public which demonstrated a strong desire to buy new automobiles made by General Motors, Ford, Chrysler and American Motors. By making the deal too costly for Nabcor, Nabcor was effectively stopped by its competitors and their co-conspirators.

Other problems arose for Nabcor as well, caused by dealers or dealer associations, involving warranty work refusals, refusals to supply cars, late car deliveries, cancellations of car orders. All these problems contributed to the time and capital structure forced upon Nabcor. Nabcor's capital commitment was geared to a lawful business operation and not to a 7-year battle against the unlawful practices of defendant automobile manufacturers, established dealerships, dealer associations, newspapers, BBB's, banks, other financial institutions, motor vehicle personnel tied in with the dealerships and others.

Because of these added burdens in terms of management and employee time and the added expenses needed to combat these illegal activities, Nabcor business to get the Nabcor System going on a recurrent, break-even or profitable basis, if it was at all possible (because of the illegality of the fleet and warranty arrangements by the manufacturers in concert with their dealerships). If Nabcor had sufficient capital to get its business going without interference in 1 or 2 years (by January 1967 or January 1968), the illegal interferences have extended the ~~time~~ period to more than 7 years -- up to and including February 26, 1973 (the 3rd Colonial Cadillac incident -- see ¶41(1) of the Affidavit of Frank Maiorana in support of plaintiff's motion for a preliminary injunction.

Nabcor could not keep up the morale of its management, salesmen, and employees in view of the difficulties Nabcor was having from all sources. If Nabcor had been making money from the sale of new automobiles, everyone in the Nabcor System would have been making more money too, which would have allowed Nabcor to attract and keep good people. But Nabcor was losing money in its automobile business, which demoralized Nabcor's employees because they were able to earn less as a result, and the better people left Nabcor for higher paying jobs. The remaining people (not as qualified as some of the others who had left) moved into higher positions. Nabcor was forced into paying additional training expenses and spending additional management time advertising for, interviewing, selecting, training and supervising new key sales and administrative personnel because of the increased turnover of personnel resulting from the demoralization caused directly by the illegal activities of defendants and the co-conspirators.

These problems destroyed Nabcor's prospects for obtaining good will. Nabcor, when it started out, was able to obtain cars for its customers through franchised and factory-owned dealers, according to promised delivery schedules, at lower prices, with minimal or no trouble. This allowed Nabcor's franchisees to obtain the cars ordered for their customers. But the difficulties which were heaped upon Nabcor by defendants and co-conspirators cost Nabcor and its franchisees a substantial amount of time and money. The franchisee problems created by the illegal activities caused the franchisees (most of whom were unsophisticated in the automobile business) to look to Nabcor as the source of difficulty when in fact the problems were being caused by defendants and co-conspirators, unknown to Nabcor's franchisees in many cases.

III. HOW ILLEGAL ACTS [illegible] AGAINST A HABCOR FRANCHISEE ADVERSELY AFFECTED THE FRANCHISEE, HABCOR AND OTHER HABCOR FRANCHISEES

In a system so established and monopolized for so long a period of time as the automobile distribution system, people have a tendency to become suspicious of any new and unfamiliar sales approach to a product so necessary as the automobile, regardless of the need for improvement in the conventional sales methods.

Generally, automobile salesmen employed by regular franchised dealerships are hostile to new, competing methods of marketing new cars, and will advise customers and prospects of the dire consequences of dealing with these new and untried methods.

This necessitates great perseverance by the operators of a new business such as a Habcor franchise. Great pains had to be taken to assure customers of the Habcor franchisee that the services are in fact better [illegible] cost less, and that the customer must be told every advantage to be expected by dealing with the Habcor franchisee. Also, the franchisee must be able to learn how to cope with the problems ordinarily to be expected from tough competition, including techniques such as "low balling" and "high balling" (i.e., raising [illegible] prices), to name only a few gimmicks in the automobile sales field.

Such effort requires a special type of individual, one who is willing to accept challenges and endure certain hardships associated with starting a new (franchised) business.

Morale is very important, to the success of these individuals.

Since many of these Habcor franchisees were venturing into business for the first time, certain adjustments had to be made, and it was normal for doubts to present themselves (similar to the doubts a first-year law student entertains when contemplating the enormity of the work load he has undertaken).

In such a situation, every success becomes a victory and every failure, regardless of how small in the eyes of others, becomes a catastrophe to the Habcor franchisee. When the franchisee enjoyed a success (a sale or a profit) he was prone to exercise greater effort which in turn produced more successes. He would more often than not tell his friends, family and business encouraging to them and [illegible] them to strive harder and enjoy greater results themselves or give more encouragement to the franchisee (especially his family As [illegible] which believed in what he was doing). The process could be expected to repeat itself and infect the entire organization with a team spirit. All persons benefit by this, and even the weakest members of the Nabcor System would be stronger and have a much greater chance for success.

In such situations, the heads of the franchised organizations have more time and resources available to further improve the franchised business thereby further benefiting each member of the team. Such situations are attractive to others who are not members of the organization and people who are anxious to enjoy success themselves are more likely to join a winning organization than one which is not. The addition of more members expands the organization which in turn will enjoy even greater acceptance.

This acceptance would remove any lingering doubts about the Nabcor System or product, and increase sales and profits for all members of the organization.

This enthusiasm and team spirit have a definite value, and every organization which has it will spend large sums of money to maintain it (by devices such as sales contests, free trips, bonuses and awards to achievers). Those organizations which don't have the enthusiasm and spirit will do whatever is necessary to motivate their mean to greater achievements.

The reverse is true once an organization becomes stagnant:

Men become disgruntled and the better men leave for better opportunities. Others find fault with things which would not have disturbed them under other circumstances.

By not abhieving business increases, management is likely to lose the respect of the employees and other members of the management team. Desperate measures are taken and this often worsens the situation.

In time, only the weakest men remain and some of these gain

Such an organization is doomed to mediocrity and all the members of such organization are damaged to the extent that the lack of sparkling performance destroys confidence and acceptance of the organization and its services or products. This results in lower income and profit for all the members of such organization. The effect of the illegal activities is similar to the effect of business libel upon a business: the business suffers a loss in a variety of ways many of which are difficult to prove, because it is difficult to prove ~~that a particular~~ which person would have made a purchase in absence of his hearing the libelous material. Also, the business which is demoralized by illegal activities has something similar to business libel working from within, where the effect can be seen more readily and causes a lowering of output on the part of the demoralized personnel, many of whom use company time and resources to find employment elsewhere, causing a further loss to the organization.

In an organization such as Nabcor which was attempting to grow and gain acceptance for its products and services, the incident in [illegible] at Paul Batt Buick was a disaster for all the members of the Nabcor organization. The loss to each member was immeasurable for the following reasons:

The structure of the Nabcor organization at that time was such that the existing Nabcor franchisees were already disenchanted because of prior abuses on the part of the Defendants and co-conspirators (activities of an illegal nature ratified and adopted by any future co-conspirators who joined the conspiracy).

The [illegible] Master Broker Plaintiff Dale Strimple (General Auto Sales & Leasing Corp.) was an experienced automobile man. His partner, Don Bolling, was also a young and aggressive automobile man. Their enthusiasm was a valuab
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addition to the Nabcor organization.

The successes they could have achieved would have been a valuable motivating factor for all the franchisees in the Nabcor System, and could have been a model for the Nabcor System, particularly because of the expertise which Messrs. Strimple and Bolling brought into the franchise business. If the business was workable at the franchisee level, these two persons should have been able to make it work. And they would have been able to do so, Increased sales by them would have created credibility and acceptance for the Nabcor System thereby benefiting all Nabcor franchisees.

Many people were waiting for Dale Stripple to prove he could deliver cars before they would order one for themselves.

The failure of Paul Batt Buick to deliver the car to Stripple when requested, after the customer was told the car was ready for delivery in Buffalo, created a serious doubt in the minds of these customers and others about the ability of Dale Stripple to delivery any cars at all. Many of these people went back to the manufacturers' franchised dealers and bought cars there instead, thinking that the Nabcor System was an unworkable deal (presumably because the manufacturers had the right at law to prevent their dealers from selling cars to Nabcor - an erroneous presumption but one which an unsophisticated public could readily make, which went to destroy Nabcor's property interest in its System for the brokerage of new automobiles).

This caused salesmen of factory-franchised dealers to find validity in what they were saying (that Dale Stripple could not get any cars and that he would be stopped by the manufacturers) by referring them to the people who had been exposed to that particular incident (the Paul Batt Buick incident).

The lost sale created more lost sales. Other Nabcor franchisees in other cities learned of this and further lost confidence in the Nabcor System. This placed a great burden on Nabcor and forced Nabcor to spend a great deal of time and money in defending its System and to try to get relief for its franchisees so that they could again have the incentive to work under the Nabcor System.

Time and effort which could have been applied to developing and improving the Nabcor System was spend defending it instead.

The injury to plaintiffs General Auto Sales & Leasing Corp. and, as a direct consequence, to Nabcor and all other franchisees in the Nabcor System, was immediate and irreparable.

A. People who would have joined the Nabcor System did not.

B. Some of the people who were members of the Nabcor System left.

C. It destroyed any incentive for franchisees and their employees to work hard for sales because of the uncertainty of delivery.

D. The fact that Paul Batt Buick did subsequently deliver a new Buick to Dale Strimple for his customer did not make that customer a happy and satisfied customer. It created an individual who had had a bad experience with the Nabcor System, which those who wanted to destroy the Nabcor System could point to, as evidence of the truth of their negative statements about the Nabcor System.

It was not the loss of one customer, but the destructive effect that the incident had on the morale of the members of the Nabcor System, and the consequent undermining of the efficiency of the Nabcor System, resulting in the reduction of business; also, it resulted in the loss of good will of a customer who became dissatisfied as a result of the illegal activities (unknown to him to be illegal, presumably) who went back and voiced his dissatisfaction to other persons who were to hear about Nabcor for the first time from this dissatisfied customer. Thus, Nabcor and its franchisees were suffering a loss in the value of their business and property (the Nabcor franchise system for the distribution of new automobiles at discount prices) as a result of this action and the result of similar actions by other persons who were involved in the conspiracy to stop Nabcor and its franchisees.

IV. HOW FAILURE OF FRANCHISOR AFFECTS FRANCHISEE

The franchisee depends on the franchisor for development, improvement, training and supervision relating to the basic business system, i.e., relating to the recurrent features, including sources of supply of cars, warranty work, customer financing and insurance, forms, sales techniques and other features of the business, as described above in Part I (¶¶ A-J). The various aspects of the Nabcor System are developed centrally, by a single organization (Nabcor), to take advantage of the expertise of Nabcor's top management and lower the developmental costs (by avoiding overlapping developmental costs), Any local developments can be reported back and considered for overall adoption by Nabcor. Without Nabcor, the Nabcor franchisee would have been unable to go into the business of marketing new automobiles (particularly where the only persons marketing new automobiles at that time are the factory franchised dealers). The franchise fee paid for the Nabcor business system enables the franchisee to avoid the staggering cost of trying to develop the system by himself (although some ex-Nabcor franchisees have tried, after learning the system from Nabcor), assuming the franchisee had the requisite expertise, motivation and capital.

By diverting the time of management and capital of the company away from its voluntarily chosen activities of marketing new automobiles (an activity which Nabcor knows best) into a defensive, non-productive operation of learning about and dealing with illegal activities, the primary resources of Nabcor (its top management and its capital) were diverted unlawfully, and the length of time and capital it would ordinarily have taken to get the system on a break-even basis (if at all possible in light of the manufacturers' continued refusals [illegible] to deal in the area of warranty work and fleet purchasing) deprived franchisees of the continuing services (discussed at length in Part I) to which they were entitled from Nabcor, under the franchise agreement. These continuing services, as outlined in the various Nabcor franchise agreements, include:

1. supplying specific makes and models of new automobiles on a timely basis to fill orders by brokers therefor;
2. supply training in management, administration, solicitation, financing, leasing, insurance and used-car wholesale;
3. supply all forms;
4. supply basic bookkeeping procedures and forms;

5. supply purchase agreement forms;
6. supply wholesale price lists;
7. supply leasing information and assistance;
8. supply registration information and forms;
9. provide assistance in programming and advertising;
10. provide consultation and give expert advice on business matters;
11. provide new cars at established fleet prices plus transportation;
12. provide assistance to (i) an Area Broker in establishing Brokers within his territory and provide necessary contracts; and (ii) a Master Broker in establishing Area Brokers and Brokers within his territory and provide necessary contracts.
13. provide complete training program, including continuing training seminars from time to time;
14. handle lease-purchase agreements for Master Brokers, Area Brokers and Brokers.

Because the Nabcor franchisees knew far less about the business than Nabcor's management, the franchisees could not cope with the increasing demands on them caused by the illegal activities, and became more dependent w/ker on Nabcor. As a result of these increased pressures and demands on Nabcor, Nabcor was less able to perform in the 13 contractual areas outlined above and the franchiseas were thereby cut off from the amount of continuing support services they needed to build their business (or stay in business for that matter), at a time when the need for Nabcor's support services intensified because of the local illegal activity directed against the Nabcor franchisee. Much of the illegal activity occurred without the franchisee being aware of it or that the activities he knew about were illegal. Thus, many Nabcor franchisees became demoralized, then left the Nabcor System. Some Nabcor franchisees tried to recover for their losses from the one person they knew -- Nabcor -- irrespective of who at law was actually responsible for their losses. Often they did not know, and did not have enough at stake to find out.

V. HOW THE PROBLEMS OF ONE NABCOR FRANCHISEE ADVERSELY AFFECTS NABCOR

(See discussion under Part II as well.)

Nabcor is dependent on its franchisees for selling new cars, the ultimate business of the franchisees in the Nabcor System. To the extent a Nabcor franchisee succeeds as a franchisee, his business prospers and adds to Nabcor's revenues on a continuing basis with decreasing need by Nabcor to give the franchisee training or other support services. Thus, a prosperous franchisee costs less money for Nabcor to support and produces the highest revenues for Nabcor. A profitable franchisee is a source of profits for Nabcor, and is a valuable property interest of Nabcor.

Nabcor has the need, therefore, of seeing that each of its franchisees becomes profitable as quickly as possible for several reasons:

1. To let quick successes by a franchisee produce greater successes by the franchisee;
2. To avoid demoralization of the franchisee;
3. To reduce Nabcor's start-up costs expended in getting the franchisee operational, a non-recurrent cost to Nabcor if the franchisee stays in business;
4. To develop a continuing royalty income from the sale of new and used automobiles by a profitable franchisee, together with profits from financing, insurance, accessories, warranty work, non-warranty repair work;
5. To develop a franchisee into one of many successful Nabcor franchisees so that the value of each Nabcor franchise will increase (whether the franchise is owned by a franchisee or is to be sold in the future by Nabcor).

Problems affecting a Nabcor franchisee locally become a problem to Nabcor, to whom the franchisee turns for help to solve a difficult problem. To prevent loss and demoralization of the Nabcor franchisee, and to ward off franchisee litigation against Nabcor, Nabcor exerted great efforts to take the lead in resolving local problems which arose.

For example, in Buffalo, where plaintiff General Auto Sales & Leasing, Inc. was cut off by GM, Paul Batt Buick and others, Nabcor's management spent an estimated 200 hours of time (including various trips to Buffalo by Frank Maiorana and Anthony Maiorana) which hours were thereby lost to the business of marketing new automobiles and developing other aspects to the Nabcor System. Appointments had to be cancelled. Responses from advertising run and paid for had to be disregarded. Additional advertising was not scheduled on time. Nabcor personnel were left unattended. But this does not describe all of the adverse effects at Nabcor's office when its top management were taken away on a crisis basis. Much business was lost, by Nabcor's inability to use its top personnel where and when needed. Thus, by forcing top management into handling problems caused by the illegal actions of others, the Nabcor System suffered irreparable injury. Time was lost which could not be recovered, and opportunities passed by, to be grabbed by competitors in the business of marketing new automobiles.

These diversions of the time of Nabcor's top management cannot be compensated for merely by saying that the time of top management has a certain value per hour. Top management's services were unique and were part of the business and property of Nabcor needed to be used as Nabcor saw fit in the orderly development of its business and not to be pulled away to handle illegal activities performed by others. By disrupting Nabcor's System, illegally, Nabcor suffered a loss in the value of its business and property; the business and property became worth less than they would have been worth if no illegalities had been committed. If Paul Batt Buick in fact conspired with GM and others, Nabcor's loss in business value with respect to the actions of each defendant and co-conspirator is the liability of each of the defendants and co-conspirators. The out-of-pocket loss suffered by Nabcor and each of its franchisees is not sufficient because Nabcor and each Nabcor franchisee suffered a loss in the value of its business and its property (the Nabcor franchise). Nabcor's losses included:

A. The loss of franchise fees and royalty income from actual Nabcor franchises;

B. The loss of car customers in various areas who could be expected to learn about the Nabcor System from satisfied customers and others who heard about the successes of the Nabcor System, including employees, friends and associates of car dealers, banks, finance companies, newspapers, BBB's and motor vehicle bureaus;

C. The loss of prospective franchisees in various areas who would otherwise have wanted to become a Nabcor franchisee, which could have increased the value of each franchise. These persons were prevented from hearing about a successful franchise because of the illegal activities which took place, which prevented the anticipated successes from occurring;

D. The loss of automobile financing reserves (kickbacks) because of Nabcor's inability to obtain customer financing from any of the major finance companies, probably because of the illegal activities;

E. The loss of auto insurance rebates;

F. The loss of warranty work;

G. The loss of parts income and non-warranty repair work;

H. The loss of used-car business;

I. The loss of income from the sale of accessories;

J. Loss due to franchisee demoralization and litigation, and non-payment of notes due Nabcor.

The franchisee's loss of these profit opportunities purchased by them as a franchise package from Nabcor was the loss of a valuable property right which could have made the franchisee wealthy, but because of the illegalities which took place, cost the franchisee a loss of his franchise fee, a loss in his own start-up expenses, and just as importantly, the loss of valuable time trying to get started (which ~~was~~ included a loss of alternative profit opportunities). If the Nabcor System had been allowed to grow without having to cope with wholesale violations of antitrust law, franchisees would not have left the System, but would have been well rewarded for their foresight and efforts. Instead, they lost money and became disgruntled.

Disgruntled Nabcor franchisees brought suit against Nabcor, amounting to about 8% of Nabcor's franchisees, with others probably contemplating suit - because of their lack of knowledge of what illegalities had taken place by others to prevent the franchisee from making money as a Nabcor franchisee.

This action against General Motors and numerous others was brought on behalf of the Nabcor franchisees by Nabcor, under its contractual obligation as franchisor to defend the Nabcor System, to recover for the franchisees the losses resulting from the illegal activities and to restore them, to the extent possible, as active, healthy franchisees of Nabcor.

VI. HOW ACTIVITIES DIRECTED AGAINST A FRANCHISEE AFFECT OTHER FRANCHISEES

Activities injuring Nabcor (see Part II above) prevented Nabcor from rendering the full amount of its continuing services to each franchisee under the Nabcor franchise agreement. (See Part IV above for a description of the continuing services.)

A decrease in value of a single franchise caused by local activity directed against a single franchisee affected the value ~~of the~~ of the other Nabcor franchises as well, because of the investigations, made by prospective franchisees, newspapers, better business bureaus, investors and others, of individual franchises before deciding to do business with the franchisor.

The attitude of one franchisee, demoralized by local illegal activity directed against him, affected other franchisees by demoralizing them, too, which in turn demoralized other franchisees (similar to the way business libel can spread and adversely affect an entire business).

The improvements and business contacts which might have been developed by the franchisee are not available for the benefit of the other franchisees, even though the franchisor has spent its time and money working with the franchisee ~~for the purpose of~~ to benefit ~~to~~ him and all other franchisees. For example, by working with several franchisees on the development of a used-car system (to sell used cars accepted as trade-ins by franchisees, at higher than wholesale prices), Nabco was developing for each franchisee a prospect for profit, based on the interaction between Nabcor and the several franchisees.

When a single franchisee is affected adversely, the whole franchise system is adversely affected. A franchise system is comparable to a business with a number of branch offices, with each branch being a separate profit center. Injury by antitrust law violation to any of the branch office businesses would be the basis for recovery for damages occurring in each of the branch offices, with the owners of the branch offices (similar to the franchisor, which is the company) collecting the full

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amount.

The same amount of recovery should be awarded (in the aggregate to the franchisor and its franchisees) when the same illegal [illegible] activities are directed against a franchisee in one city. The effect is felt by the franchisor as well as the franchiseesin other cities for ~~[illegible]~~ the same reason ~~[illegible]~~ franchising is a valuable method of distribution: movement of people and ideas from one city to another, by communications ~~between~~ with or among relatives, salesmen, travellers, vacationers, business associates, school mates, businessmen, politicians, attorneys and others who would recommend the Nabcor System to persons in other cities if the System worked for them in their own area.

The good will of each Howard Johnson franchise franchisee-owned or [illegible] is affected ~~each~~ [illegible] time a customer of a franchised or company-owned restaurant is dissatisfied in any area of the country, which is why the franchise or licensing agreement of certain franchise organizations sets forth stringent control provisions enabling the franchisor to assure quality control of franchised owners and to regulate the use by other franchisees of its name and trademarks.

A franchised business is similar to a branch office (both are distribution points, and dependent on the [illegible] of the branch office or franchisor for a variety of support services profit centers) except that the former is a separate entity, independently owned and financed. Yet, illegal actions directed against a franchisee have the same effect on the franchisor as illegal actions directed against a branch office in one city would have on the absentee owner of the branch office (including all other branch offices), and any recovery should reflect this. The franchisor and all franchisees should, in the aggregate, recover an amount equal to the amount which would be recovered by the owner of the branch office. After deducting special damages proven by the franchisee against liable parties, the remaining amount of recovery (based on the theory that a [illegible] is [illegible] of the [illegible] companies) should be divided between franchisor and all franchisees. This should be determined by reference to the percentage of the overall market for which a franchisee is responsible responsible to develop and a division of the profit potential for the territory, based upon the allocation of gross profits in the franchise agreement (similar to the way a lessor and lessee divide

The franchisee has a business protected by the antitrust laws, but he has protection for a property interest as well - his franchise. Loss in value of his franchise is a loss in value of his property for which he has a right to recover under the antitrust laws. The franchisor has given the franchisee an exclusive right to conduct business under the franchisor's name using the franchisor's know-how and continuing expertise - in a certain area (called the franchisee's territory). To the extent of this grant, the franchisor is foreclosing its own exploitation of the territory. The right of a Nabcor franchisee to sell new cars using the Nabcor name and system in the assigned territory is a valuable property right, which franchisees have paid Nabcor up to $50,000 to obtain. Although the franchisor has assigned an interest in the territory, the franchisor has a continuing interest in the franchised business. The franchise agreement requires that the franchisee perform certain acts in furtherance of the Nabcor System, including the following:

1. Engage in the business of brokering new and used automobiles;
2. Establish a network of Brokers and Area Brokers (applicable to Master Brokers and Area Brokers only);
3. Sell a minimum quota of cars during a stipulated period;
4. Master Broker is to set up his operation to handle lease-purchase agreements itself;
5. Master Broker agrees to supervise, train, handle supply and delivery of all purchases by its Area Brokers and Brokers;
6. Master Broker will arrange for and provide new cars at established fleet prices, plus transportation, plus Nabcor distributor fee of $50 (subject to increase if justified by increased costs);
7. Master Broker will engage in no other business other than the one presently engaged in;
8. Master Broker will accept assignment of all Area Broker and Broker franchises and honor all terms of the agreements;
9. Franchisees will not disclose trade secrets or know-how.

Any loss of performance by a franchisee under his franchise agreement resulting from illegal activity gives the franchisor a cause of action for the unlawful interference with the franchisor's right to performance under the franchise agreement.

Also, each franchisee has an interest in every other franchise. The value of a franchise depends in part on the number and percentage of successful franchisees in the System. A franchisor with only one franchisee probably may have a long way to go before making his franchise system viable. The franchisor's costs to maintain one franchise may be exceedingly high. fixed Administrative costs should be allocated over a larger number of franchises to enable the franchise system to be profitable. Nabcor has sold more than 200 franchises and was well under way to establishing a competing system for the distribution of new automobiles in the United States, which would have given Nabcor and its franchisees more strength in automobile purchasing, financing, insuring and repairing, and in national advertising, therefore a greater profit potential. Also, Nabcor would have had more money for product-service development and improvement.

Distribution problems affecting a multi-branch business are the same as the problems affecting a franchisor trying to find the least expensive way to distribute a product or service. Therefore, the same basis for recovery should be granted to the entire franchise system, to be divided among the franchisor and franchisees as their respective interests may appear. The franchise aspect of Nabcor's business is only a method of marketing and it leaves to Nabcor development and performance of the essential aspects to the automobile business, on which the franchisee is vitally dependent. Thus, the profit potential of a given franchisee is dependent on the new-basis and success of the franchise ~~[illegible]~~ [illegible] the franchise [illegible] and the other franchisees in addition to himself ~~[illegible]~~ and a [illegible], which [illegible] part of the franchise [illegible] [illegible] to the others, particularly when the [illegible] part of a competitive [illegible] [illegible].

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Order of Second Circuit

UNITED STATES COURT OF APPEALS

Second Circuit

◆

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-seventh day of May, one thousand nine hundred and seventy-five.

National Auto Brokers Corporation,
et al.,
Plaintiffs-Appellants,

v.

General Motors Corporation, et. al.,
Defendants-Appellees.

It is hereby ordered that Upon consideration of the motion made herein by counsel for the

General Motors

~~appellant~~ appellee / ~~petitioner~~ ~~respondent~~

by notice of motion dated May 15, 1975 to dismiss the appeal from the United States District Court for the Southern District of New York for lack of jurisdiction or alternatively for summary affirmance that the motion to dismiss be and it hereby is granted as ~~denied~~ the appeal is interlocutory.

~~It is further ordered that~~

A. DANIEL FUSARO
Clerk
by Edward J. Guardaro
Senior Deputy Clerk

* * *

BEFORE: HON. TOM C. CLARK
Associate Justice
HON. WALTER R. MANSFIELD
Circuit Judge

~~Circuit Judges~~

we can get this litigation back on a business-like basis.

Now, I have the problem of Westchester County, Westchester-Rockland Newspapers and their motion for summary judgment.

Is someone here representing Westchester?

MR. LEADER: Yes, your Honor.

THE COURT: Okay.

Now, I am not going to attempt to decide that today. You have until June 30 to respond but I thought about it and I will tell you right now that I have very grave doubts about granting that motion. There are a number of defendants in this action who are connected to this action or not connection in about the same way as your client is. We have got little auto dealers in Buffalo, we have got some newspapers, we have got some banks and so forth.

Now, some parties have been let out of this action on consent. Your client and other parties, of course, have not been. It seems to me that it really is not, in the long run, very provident to handle this problem by way of summary judgment. You have got an allegation of conspiracy here. There may be nothing whatever to it, but it is the kin of thing that on its face just isn't a very good thing for summary judgment. There is the allegation, as I understand it, that advertising was received after 1966 because of some complaints by the Better Business Bureau. There are some Better Business Bureau defendants in this case.

I think that there is undoubtedly a very seriou question to say the least as to whether there is merit to the claim against your client, but if we start handling the claims by summary judgment motions, we are going to have a whole flock of them and if I should grant one or more of th the mere fact of granting a summary judgment motion will create an appellate problem because the plaintiffs will say well, we didn't finish with discovery, we didn't have a trial, we hadn't rested and what's the difference if the position of Westchester-Rockland versus another defendant and conspiracy isn't the kind of thing you resolve on this kind of an incomplete record.

I think the Court of Appeals would have difficulty in that situation.

So, I think there is a good chance if I grante your summary judgment motion or others that might come in like it, it might be, you know, you are aware, perfectly aware in a summary judgment situation there is an immediat victory and a long-term defeat.

Now, it seems to me the way to handle the litigation is to somehow get this discovery over with and get to trial. It would be very desirable to try it next fall.

I would hope to do that.

I would also hope to figure out a format so that these defendants that are not really central to the case don't have unnecessary legal expense and what that means is that I see no reason why all these people have to attend all the pretrials and at least, if today is any sign, the attendance is beginning to drop off. When we get to the trial, if it is a long trial, and I don't know whether it will be or not, it seems to me that it would be absolutely provident to have every single defendant represented by a lawyer during that entire trial.

I think there must be a way to conduct this in a more efficient way so that we don't have scads of lawyers sitting and collecting fees and burdening their clients for a month's attendance at a trial, where maybe their name comes up for five minutes and that has to be achieved somehow, but you have the same problem or your client has the same problem as a lot of defendants, and it somehow has to be worked out. I don't know exactly how it will be but I don't think summary judgement is the solution.

So, I don't want to cut anything off. I know you have got your motion adjourned until June 30 and I don't know exactly what the status of the papers are but the papers are still coming in but so long as we are together and I don't want to have another hearing on this, I just have such reservations that I don't think it is going to be possible.

So, you convey that and we will not have anothe hearing on this motion.

MR. LEADER: We will be glad to have our papers submitted and have you consider the question that way.

With all due respect, I certainly hope you will consider our motion on its merits. There have not been an over abundance of summary judgment motions and I would hope that your concern that a flood of those would follow if you granted our motion, or your concern with the outcome in the Court of Appeals would not burden you in deciding the merits of our motion.

THE COURT: Well, the Appellate question is central to the summary judgment problem because what would happen, let's suppose we could try this case next fall -- would be in a position, if I granted your judgment, in the position of having a summary judgment; you wouldn't partici pate in the trial and then there would be some kind of an appeal presumably -- I've got to expect that -- and maybe a year or more from now the summary judgment in your favor might get reversed and then we have got a problem of some kind of truncated trial situation. That isn't very good a be that I would like to go to trial as soon as possible, subject to the one problem we have.

In the area of --

THE COURT: It is very important --

MR. PERSON: The area of monopoly is a very important area and I would like to get discovery in that area. I haven't been allowed to get the documents relating to that, which, of course, hampers me with any meaningful--

THE COURT: What additional discovery do you want from the Westchester-Rockland Newspapers for trial?

MR. PERSON: Document production.

THE COURT: Of what?

MR. PERSON: Relating to the market that they have. In other words, documents that I can use as the basis for, as evidence relating to their monopoly, the position in the --

THE COURT: In the newspaper field?

MR. PERSON: Yes. In the area of the relevant market, both the product, the service --

THE COURT: What has that to do with the case?

MR. PERSON: It is Section 2 of the Sherman Act. I've alleged that they have monopolized in the daily newspaper market in an area in which they admittedly have total control.

THE COURT: Your client was in the automobile business.

MR. PERSON: They used their monopoly in a way that excluded us from the pages. They were the only ones who had newspaper pages in that area and I am saying that th is a monopoly which has adversely affected us.

THE COURT: We are not going to get to that issue right now.

MR.PERSON: Well, that's the primary thing, you Honor, in addition to limited discovery.

THE COURT: If you want that one additional deposition --

MR. PERSON: Mr. Fanning and I believe there wa one other person, a secretary in the department --

THE COURT: What do you need the secretary for?

MR. PERSON: There was some question of -- I would have to go back and read the papers right now. There is one other person that had some information. It wouldn't be a very extensive deposition, but the amount of remaining discovery deposition was outside of the monopoly argument and is rather limited. I would say there are two depositions.

Other than --

THE COURT: Where is Mr. Fanning?

MR. LEADER: I don't know, your Honor.

THE COURT: Where is his office?

MR. LEADER: I apologize. I am not that familiar with the interworkings of this newspaper and I don't know.

THE COURT: Do you know?

MR. PERSON: No, I do not.

THE COURT: The way I would like to leave it, I will not permit discovery on the monopoly theory. I think that, at least barring some further showing and development of this case, that to me is just too far out.

I assume that if you want to find out the reason for certain policies and the finger hasn't been pointed to Mr. Fanning, you ought to be able to take Mr. Fanning's deposition just on that narrow point and that shouldn't be long and I am sure Mr. Fanning is going to be in New York sometime in the next few months and you can get his deposition.

Now, was the other person Mrs. MacGregor?

MR. PERSON: That sounds familiar, your Honor.

THE COURT: I mean it is so vague.

Let's take Mr. Fanning and see if you can't complete the discovery as to Westchester-Rockland with Mr. Fanning's deposition and that will be it, hopefully.

MR. LEADER: Your Honor, I hope this is without tion, when do you expect to be finished?

MR. KAPLAN: I think, your Honor, that it is reasonable to think that, assuming we don't have any further big problems with the depositions from Mr. Person, and one other thing that I would like to mention, which is this:

We have a number of witnesses who are not within the subpoena range of the Court whom we expect will testify voluntarily and who we do not intend to depose, if they are willing to do so, to the extent that they may tell us within the next month or so that they won't come to New York, we have to take depositions there but subject to that not getting out of hand, I think we can reasonably count on finishing discovery by fall.

THE COURT: Well, what's "fall"? Somewhere between September 1 --

MR. KAPLAN: And the end of October.

THE COURT: All right.

Let's say you think your discovery can be over by the end of October.

MR. KAPLAN: I think that is reasonable.

THE COURT: Mr. Kaplan?

MR. PERSON: I would be prepared at all times subject to Mr. Maiorana's position to go to trial. I am not finished. There is a lot of discovery that I honestly could use but I would rather go to trial.

THE COURT: If we could go to trial.

MR. PERSON: I will waive the discovery right to that extent.

THE COURT: Well, I think we better try to have a trial in late fall.

That's all I want.

MR. KAPLAN: Excuse me, your Honor. There is one outstanding discovery matter which is a notice to produce that we served in March. I don't know whether you want to take it up now or some other time.

THE COURT: What is it?

MR. KAPLN: If I may, I'll just hand it up.

THE COURT: Is this objected to or what?

MR. KAPLAN: Objected to by Mr. Person on the grounds of irrelevancy, burdensomeness and something else which I don't happen to remember at the moment but no specific objection other than those.

And if I may, I'll explain the purpose of it.

Mr. Person did serve his answers to our damage interrogatories. He claims 1.6 billions of damages in this case, the vast bulk of which consists of income that he claims he would have had if he had been able to seel the 20,000 NABCOR broker franchises that he intended to and had

Plaintiffs' Notice of Deposition

SCHEDULE A

Name of Witness or Defendant	Date, Time & Place of Examination
NATIONAL AUTOMOBILE DEALERS ASSOCIATION Last-Known Address: 2000 K Street, N.W. Washington, D.C. 20006	
Name or Description of Officers or Managing Agents of Witness National Automobile Dealers Association to be Examined:	
JOHN CONLEY and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or described in Schedule B hereto.	November 28, 1975, 10:00 a.m. Law Offices of Donald A. Randall, E Suite 1201 1000 Connecticut Ave., N.W. Washington, D.C. 20036
EUGENE R. TANZ Last-Known Address: 20th & Spruce Streets Philadelphia, PA	December 15, 1975, 10:00 a.m. Persons and Ciccone Suite 2428 P.S.F.S. Building 12 S. 12th Street Philadelphia, PA 19107
Defendant GENERAL MOTORS CORPORATION	
Name or Description of Officers or Managing Agents of Defendant General Motors Corporation to be Examined:	
Ken C. Womack, Buffalo Chev. Zone Mgr.	November 17, 1975, 1:00 p.m.***
R. W. Redmond, Buffalo Zone, Cust Rel Mgr	November 17, 1975, 4:00 p.m.***
Mr. English, Buffalo Chev. Zone, Ass't Mgr	November 19, 1975, 2:00 p.m.***
Mr. Drury, New York	November 19, 1975, 3:00 p.m.***
Mr. Lowe, Washington, DC, Chev. Zone Mgr.	November 19, 1975, 4:00 p.m.***
Jack Douglas, New York Chev. Zone Mgr.	November 24, 1975, 2:00 p.m.***
Robert M. De Simone, Fleet Mgr, Phila. Zone	November 24, 1975, 3:00 p.m.***

SCHEDULE A (Cont'd)

Name of Witness or Defendant (Cont'd)	Date, Time & Place of Examination
Walter Gray, New York Pont. Fleet Mgr.	November 24, 1975, 4:00 p.m.***
Grover Durham, Buick Dist. Mgr, Phila.	November 26, 1975, 2:00 p.m.***
Mr. Echinrude, Head of Chev. Phila Z Rdmen	November 26, 1975, 3:00 p.m.***
Donald Hultin, Pont. Zone man, Wilm. Del.	November 26, 1975, 4:00 p.m.***

Defendant FORD MOTOR COMPANY

Name or Description of Officers or Managing Agents of Defendant Ford Motor Company to be Examined:	
Jack Johnson, Dealer Rep., Phila. Dist.	December 17, 1975, 10:00 a.m.***
Howard C. Cook, Mgr. Fl & Leas Sales, Dearb.	December 18, 1975, 10:00 a.m.***
Mr. N. Stalloni, Fl & Leas Merch Mgr, Phila.	December 18, 1975, 2:00 p.m. ***
R. B. Medler, Dist Sales Mgr, NY Dist.	December 19, 1975, 10:00 a.m.***
J. R. McKinney, Flt Mgr, NY Dist Sales WP	December 19, 1975, 11:00 a.m.***
A. Frank, Asst Dist Sales Mgr, Gen Op NY D	December 19, 1975, 12:00 a.m.***
E. C. Kraus, Buff Dist (Zone B-2)	December 19, 1975, 2:00 p.m.***

and by any officers or managing agents having knowledge or information not known to any of the officers or managing agents properly designated above relating to any of the matters alleged in the complaint or described in Schedule B hereto.

*** Place of deposition is at the offices of Carl E. Person, 132 Nassau Street, Room 424, New York, N.Y. 10038.

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establish all of the facts on which Mr. Person would rely, I think in the case of this defendant the papers affirmatively show that he has as a matter of law no case against the Westchester-Rockland newspapers.

I know your Honor is very well aware of the tremendous burden of this lawsuit --

THE COURT: What burden is it for you now? What are you doing in the lawsuit? Do you attend depositions?

MR. MORRIS: I have not attended depositions.

THE COURT: Of course you wouldn't attend. I think you would be crazy --

MR. MORRIS: No, we haven't done that. Just reading the volume of papers --

THE COURT: What papers are you having to read currently?

MR. MORRIS: None at this moment, but I think there have been two sets of papers that came in this week, we were served with another one by Mr. Person today.

THE COURT: What is that about?

MR. MORRIS: This is a request for further interrogatories and the request for admissions of fact.

THE COURT: How long is it? Addressed to whom?

MR. MORRIS: Addressed to all defendants, as I understand it. It has 11 paragraphs in it.

MR. PERSON: Your Honor, you advised me that the only way I could serve interrgoatories was to clear then with you first, which I now ask to do. I haven't served them technically on anybody. I have merely given them copies. I have now handed you a copy and I'd like to go through the procedure of clearing the interrogatories so that we can have the record set up on this.

Previously, I might add, you denied all of my interrogatories when I served them about a year or so ago. I had about six sets, or so, and you denied all of them. I am trying to limit it to the information that I could use at this moment. I have cut down all of those sets, numbering hundreds, into a number of interrogatories amounting to 11, in this case.

MR. MORRIS: I propose to simply respond to those by pointing out that when this matter, so far as this defendant was concerned, was before your Honor on May 28 of this year, Mr. Person said he waived any further discovery.

THE COURT: That was a kind of conditional thing. What does this mean, No. 1, identify and describe each communication by you during the covered period relating to any of the plaintiffs with any of your franchised dealers. This wouldn't apply to the newspaper, presumably? Is this addressed to all of the defendants? Have you served this on all the defendants?

MR. PERSON: Yes, your Honor, I would propose to do that, on the basis of being able to eliminate my need for extensive depositions, if I could only find out who the people are that had communications and the nature of them. Then it eliminates the needless thing of going out and deposing everybody and trying to find out what they know.

It enables me to see what it is that I will have to contend with in terms of what they might testify to, what they know, it is something that I haven't been able to get. I find out now that half of the people that I have noticed for deposition are no longer with the company.

THE COURT: Is this going out to all the dealer defendants, everybody?

MR. PERSON: Everyone would receive that but most of the interrogatories relate only to the manufacturers

MR. KAPLAN: Your Honor, if I may, about that particular interrogatory, it may have a very familiar ring to you and that's because it is not the first time we have seen it here. That interrogatory in substantially the same language was interrogatory No. 1 of the set of the interrogatories that you struck some time ago.

In particular at that time we pointed out and I think your Honor recognized that since the plaintiffs had all the documents relating to plaintiffs, they had all of the written communications that are covered there, and that to the extent he was asking companies like General Motors and the First National City Bank to canvass thousands of employees to find out if they ever heard of the plaintiffs, it was an unreasonable request, and you struck it on that ground.

Furthermore, Mr. Person says that he just learned that the depositions he noticed are of people who are no longer with the company. Mr. Person just noticed 20 more depositions, 11 General Motors employees, seven of whom are no longer employed by us.

Mr. Person's interrogatory No. 14 served in July of 1974 asked us about each of those 14 employees, he received answers to those interrogatories in excess of a year ago telling him not only that they weren't employed by us but when they were terminated and where they were now living, so this should not be any particular mystery to Mr. Person.

If he intended to pursue those people, he has had years to do it in.

MR. PERSON: It isn't that I haven't been pursuing discovery, your Honor, and I fail to recall the existence of those answers, so that those people who are capable of being presented should be presented at the deposition and the other people I will see if I have time to depose them or not.

THE COURT: I think there is much merit in what you suggest to having an absolutely cutoff of discovery until further Court order. I think that this is absolutel out of hand and it has been out of hand for a long time.

The case spent two years having litigation about whether the discovery was related to the class action motion. Two years were wasted with that part. Then we had another three years coming and discovery -- we have talk of 20 depositions and interrogatories, and so forth. It has just absolutely run riot.

I am now going to cut off discovery at the present time absolutely in all respects until I permit it expressly for express purposes. That covers Frank Maiorana's deposition and everything else, and we will proceed to have some pretrial conferences, and you will work out some format so that we don't have this consumthings. Can you do that?

MR. KLEINBARD: I can do that. We can do that or if he is going to Xerox it, we can Xerox it for him and give him the Xerox.

MR. PERSON: My cost is about a penny, your Honor. His cost is 15 cents, and we are dealing with thousands of pages.

THE COURT: I just would break the log jam on that.

MR. KLEINBARD: We will try to work out something with Mr. Person so he gets access to the depositions, whether we Xerox them at his expense or not, we will work that out.

THE COURT: Please do that. I give you back these interrogatories. We are not using them right now.

(Court adjourned.)

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I (We) hereby certify that the foregoing
is a true and accurate transcript to the best
of my (our) skill and ability from my (our)
stenographic notes of this proceeding.

Laurence H. [illegible]

Official Court Reporter
U. S. District Court

as to who the co-conspirators are or defendants, his name appears as somebody who refused to deal. When he was first asked to name those who were conspirators, he did not name him.

THE COURT: You don't have to make any extensive preparations on Appuzo between now and the next meeting.

MR. KLEINBARD: I would just like at some point that some of these people are not in the case.

THE COURT: Let us use the remaining minutes to get another illustration.

We have Bates Pontiac a co-conspirator?

MR. PERSON: Yes, your Honor. They were a defendant, now a co-conspirator.

THE COURT: Let us try to run through the evidence on that.

MR. PERSON: Charles Cohn --

THE COURT: You are naming witnesses?

MR. PERSON: I am naming three witnesses. Charles Cohn who worked for NABCOR as a franchise man and --

THE COURT: NABCOR employee, right?

MR. PERSON: Yes.

Ernest Turco and Frank Maiorana.

THE COURT: Ernest Turco, what is his firm?

THE COURT: For instance, if someone was present, if Bowling was present and heard English or whoever that other fellow is.

MR. PERSON: Mr. Womack or Mr. Redman.

THE COURT: Mr. Womack say, in other words, if Bowling came to court and testified that I was present at a meeting with English and Womack and English said we are bent on driving NABCOR out of business, that would be non-hearsay evidence admissible against General Motors to prove a conspiracy.

MR. PERSON: I will develop that part of it.

THE COURT: Or through a boycott or however you want to call it. There are lots of other non-hearsay ways to prove things. But you analyze it and you come in here and let's be prepared to outline your non-hearsay evidence of conspiracy.

MR. PERSON: Okay. Now, does that include the structural part of the business? Because that is an important part that I want to set up a record for.

THE COURT: I can't say yes or no.

MR. PERSON: I will make an offer of proof.

THE COURT: You make your offer of proof. But the thing I come back to though, Mr. Person, is this. The fact that dealerships, the fact that there are certain agreements about the handling of warrantee service, indeed the fact that there may be certain standard conditions about who can procure cars on so-called fleet arrangements, that -- I don't know whether that would be evidence of a conspiracy. I don't know --

MR. PERSON: These are territorial exclusives. They are using these devices to do this.

THE COURT: That is your offer of proof. Let us take the primary problem. I gather that these restrictions and conditions and what have you about General Motors'relationships with its dealers existed long before NABCOR was even thought of.

MR. PERSON: That isn't true, your Honor. Some of these things they developed for NABCOR.

THE COURT: Let us take the ones they didn't. The ones that existed long before NABCOR. If we are talking about a conspiracy directed to put NABCOR out of business, those long established practices really wouldn't have a lot to do with such a conspiracy.

MR. PERSON: Unless they are illegal.

THE COURT: Now the thing that you must focus on, it seems to me, is non-hearsay evidence of a conspiracy directed at NABCOR.

MR. PERSON: I will leave the structural aspect, I will just reserve that.

THE COURT: That isn't an out of the case. I think we can come to grips with the particular problem if we start with the alleged conspiracy to eliminate NABCOR, harm NABCOR or boycott NABCOR.

MR. PERSON: What day and week and time?

THE COURT: Why don't we have Thursday at 4:00. What did you start to say, Mr. Kleinbard?

MR. KLEINBARD: I was going to say I think you reached that conclusion independently perhaps for different reasons. These areas will have usefulness for us from the discovery point of view which I think is all important in being able to eliminate our discovery. I think it is more important to concentrate not on the structural aspects but on the non-structural aspects of these practices.

THE COURT: It was not far from our minds, but we obviously have a limited amount of time and I wanted to get your side of the case and certainly you are entitled to get the defense side. But let us stick for the moment for your side, please.

Thank you all very much.

(Adjourned.)

APPEARANCES: (Continued):

SULLIVAN & CROMWELL, ESQS.,
Attorneys for Defendant Ford Motor Company,
BY: MS. PAMELA DWYER, ESQ.,
Of Counsel.

KELLEY, DRYE & WARREN, ESQS.,
Attorneys for Defendant Chrysler Corporation,
BY: WILLIAM C. HECK, ESQ.,
Of Counsel.

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THE COURT: The main subject we were to cover at this meeting was to inquire about what proof the plaintiffs would have of conspiracy against NABCOR.

First I wonder if we can catch up on a couple of loose ends.

At the last meeting there was reference to some possible testimony by a Richard Arnold and an Edward Simmons, formerly employees of Bob Bain Chevrolet, Rodhester, New York.

Have you been able to interview these people, Mr. Person, and can you tell us what they would testify to?

MR. PERSON: Your Honor, I have only chosen to interview one of the two inasmuch as Mr. Simmons is newly employed by defendant Bob Bain.

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From what I understand, Mr. Kaplan has notes taken from at least Mr. Arnold with respect to --

THE COURT: Who have you interviewed?

MR. PERSON: Mr. Richard Arnold.

Mr. Kaplan or other attorneys, I should say, from Detroit for GM, after Mr. Arnold got out of the grand jury room, debriefed him taking notes and I would like to have those notes produced inasmuch as the attorneys were not his attorneys.

THE COURT: Let us take it one step at a time.

Have you interviewed Mr. Arnold?

MR. PERSON: Yes, I have.

THE COURT: What will Mr. Arnold testify to?

MR. PERSON: Mr. Arnold, first of all, confirms many of the incidents that took place at Bob Bain, but rather than being specific in the area that related to the grand jury investigation said that he would like to see the notes or the testimony to refresh his re memory.

In other respects he gave me a lot of information, but when it came to the grand jury itself he said he would like to have his --

THE COURT: I am not talking about the grand jury as such.

If you had to go to trial today, what would he testify to?

MR. PERSON: Insofar as that testimony is concerned, I did not get enough specifics to be able to do more than say that he would confirm that Bob Bain did have communications with English concerning the order attempted to be placed by Dale Strimple and was present at the third conversation and confirms that Mr. Bain was quite vehement in saying that he would not supply cars to NABCOR at that time.

But he has a lot of other information --

THE COURT: Did he confirm, did he corroborate anything about statements made by any representative of General Motors to Bob Bain to the effect that there would be a shutoff or some other reprisal if cars were sold by Bain to NABCOR or one of its people?

MR. PERSON: Mr. Arnold said that Bob English is or was a good friend of his and he had told him a lot and that he wanted to refresh his memory.

He confirmed without being specific that Bob English was involved in having NABCOR shut off and he did say he wanted to be refreshed.

THE COURT: And he testified at the grand jury?

MR. PERSON: Yes, he did, for a good many hours, and GM's lawyers interviewed him after he got out.

THE COURT: Okay.

You want production of the notes of those interviews?

MR. PERSON: That is correct, as to any people who were not employees of GM.

THE COURT: What about that?

MR. KAPLAN: Your Honor, Mr. Person has made that request before, your Honor has refused that request before.

There was a grand jury investigation in Buffalo. I am informed that Mr. Arnold did testify before the grand jury. I am informed, further, that he was inverviewed by counsel for General Motors.

It may be, and I don't mean to so represent because I don't know the facts at the moment, that he was interviewed in the course of a joint defense at that grand jury of which, I believe, Mr. Bain may well have been a target and he did so at Mr. Bain's instruction, and if that were so the attorney-client privilege would apply.

But putting that to one side because I can't represent those facts to you this afternoon, the memorandum which we have was prepared by GM attorneys in the course of the defense of a potential criminal proceeding. It contains their mental impressions, their observations. It is classic attorney work product.

I object to its production.

I might add further, your Honor, that what Mr. Arnold appears to be concerned about, as Mr. Person has related the story, is the possibility that anything which he may have said during the course of that interview might be used to impeach his testimony at trial.

If that is so, the only function which that memorandum serves is to keep Mr. Arnold, should he testify, honest.

I submit that that is a proper purpose and that the memorandum shouldn't be disclosed, and if your Honor would like I would be happy to submit law either now or at any other time on it and I would certainly request the opportunity to do so before any adverse order was entered.

MR. PERSON: Mr. Arnold was not an employee of General Motors and he was not an officer or director of Bain more particularly. He was just a witness who was in there and the interview of him, I don't think, at least the notes of the interview, should not be privileged because of that.

THE COURT: I think if you have two parties who are the subject of a grand jury investigation, in the first place, it is natural for their lawyers to cooperate. Hopefully they do cooperate with each other to some extent.

I would certainly feel sensitive about ordering General Motors to disclose those debriefing notes, you know, without knowing a pretty good reason to do so.

MR. PERSON: It has been a long time, your Honor.

THE COURT: When was the grand jury?

MR. PERSON: 1969, I believe.

Is that correct?

MR. KAPLAN: That is my understanding.

THE COURT: I don't know how to put it.

You are the plaintiff in the case. Just from the sample of your proposed evidence last time, I gather that it is a very important part of your case to prove that there were steps taken by General Motors to prevent dealers like Bob Bain from selling to NABCOR.

We went over two or three dealer problems, and each case you were suggesting testimony to the effect that there was a shutoff of the relationship or a frustration of the relationship between smoe dealer and NABCOR or a NABCOR franchisee because of the intervention of General Motors.

We got a question of law about whether you can introduce the testimony of Dale Strimple or Frank Maiorana, but obviously if a guy like Arnold was present at a conversation between a General Motors man and Bob Bain and heard General Motors utter something, that would be very important to you.

But you are the plaintiff and you got the burden of proof.

I have heard, you know, for years about all these depositions being taken. If a fellow can corroborate -- have you taken the deposition or have you really lined up anybody who heard General Motors say any of these things?

That is going to be -- according to what I heard last week, that is going to be crucial to your case.

MR. PERSON: Your Honor, I prepared --

THE COURT: And if there was a question of taking depositions, it would seem to me you would zero in on such people very, very fast and maybe they would take the Fifth Amendment or something, but at least you would try.

Have you noticed Mr. Arnold's deposition?

MR. PERSON: I had not noticed him, but I did notice quite a few, 22 GM employees.

THE COURT: Let us talk about 22 GM employees.

I am talking about people at these dealers who heard GM say things.

MR. PERSON: No. But I would like permission to notice Mr. Bowling for a deposition. He has agreed --

THE COURT: Mr. Who?

MR. PERSON: Not Mr. Bowling, Mr. Arnold, for a deposition.

He has agreed to testify, however. He has agreed to come in and he will confirm our story.

THE COURT: Nobody knows what he will say and I'm really not -- unless you have done something to demonstrate a crying need for that debriefing memo, and I'm not sure even then, maybe it is privileged, but I am not going to require production of that unless you have done a little more than call Mr. Arnold on the phone.

MR. PERSON: No, I did not call Mr. Arnold, your Honor, I spent approximately eight hours with Mr.

Arnold this weekend.

THE COURT: Where?

MR. PERSON: In Buffalo.

MR. KAPLAN: Your Honor, if I may point something out which I think is relevant to what you are saying, Mr. Person in the five years of this litigation has conducted 38 depositions. Not one of those 38 witnesses was a present or former employee of any automobile dealer.

He has taken 13 depositions of the First National City Bank and 11 of the Wilmington Trust Company and Lord knows that five years into this case is hardly the time, especially after Mr. Person has volunteered on a weekly basis to go to trial without further discovery, to go tearing off after a witness who is not even going to tell him whether he had a conversation until he can see what he swore to before.

MR. PERSON: Your Honor, these depositions were taken under the duress of a motion for summary judgment and I sought permission in each case of the Court to take those depositions.

The mere fact that the Court entertained the motions for summary motion at such an early stage --

THE COURT: I don't know what the motions is for before any of the things we discussed already.

THE COURT: I don't get such a distinction in time. It seems to me we have been talking about the 1968-1969 time period.

Don't all of these things relate to that?

MR. PERSON: Most of it, your Honor. From late 1966 through 1969 for the most part.

THE COURT: Let's be realistic.

If Mr. Person can convince a jury that there were a number of isolated instances where NABCOR or NABCOR franchisees had trouble with a car, if it is a single car or two cars, whatever it is, and if the jury would believe that in connection with those incidents, if there was creditable testimony by someone who heard General Motors say these kinds of statements about not dealing with NABCOR, we are beginning to answer the problem we talked about last week, because that is the kind of evidence which is clearly admissible against General Motors.

I got over the hump a minute ago when I talked about the jury believing it. We are talking about the admissibility of evidence.

It is the kind of direct evidence which would establish conspiratorial activity and participation or direction on the part of General Motors and then you begin to get a basis for getting in the other evidence, other type of evidence on the ground that it is the statement of a co-conspirator of General Motors stated in the course of the conspiracy.

I mean, to talk about it being isolated instances, that does not do anything. That is the way -- I don't know whether there was a conspiracy or not, but that is the way this kind of a conspiracy would manifest itself.

MR. KAPLAN: Your Honor, my point is only this:

We can assume today that everything that Mr. Person has in the way of hearsay will go to the jury if your Honor is so inclined. I would submit it would be error, but if your Honor is so inclined we could do that. We could then have a trial involving litigation over the circumstances in which NABCOR dealt with 85 different automobile dealers.

I submit, your Honor, that the law is very plain that Mr. Person has got to connect each of those dealers to a conspiracy, and while some of this evidence may or may not be probative of that in one case or another it is not necessarily across the board, and the alternative, I suggest, to a trial of 85 alleged refusals to deal with different automobile dealers is to spell out what the evidence is and then to put the question to your Honor at that point, after we see what it is, as to whether it does connect up all of these different defendants and all of these alleged co-conspirators and whether there is enough at that point to go to the jury and whether there is enough at that point to warrant continued discovery in all of these different areas.

Excuse me, Mr. Person, I would like to finish.

THE COURT: I heard enough today. I mean, this is more than I have ever heard in all the years I --

MR. PERSON: It is a small percentage, your Honor.

MR. KAPLAN: Your Honor, the fact, if it is a fact, that Mr. Durham made some statement to Anthony Maiorana on the phone -- and what Mr. Person didn't tell you was that it was in September 1971 that Mr. Maiorana claims that that happened in Philadelphia about a car, a single car, at a dealer in suburban Philadelphia -- is not probative of what happened in New York City in 1966 or in Buffalo in 1967 or in Baltimore in 1969 or somewhere else in 1972.

All I am suggesting, your Honor --

MR. PERSON: Your Honor, I can tie it up.

MR. KAPLAN: Excuse me, Mr. Person.

All I am suggesting, your Honor, is the possibility that those different matters are not connected, the possibility that this evidence, if it were adduced, is not sufficient to send 85 separate refusals to deal or alleged refusals to deal to the jury or to be considered.

THE COURT: Have you ever sat through a criminal conspiracy case?

MR. KAPLAN: Your Honor, I can't say that I have.

THE COURT: Okay. This is what goes on in any real difficult criminal conspiracy case. And if you read the instruction of a Judge in instructing the jury on a criminal conspiracy case, the standard boilerplate instruction tells the jury that in a criminal conspiracy case you never get or you usually don't get anybody to come in and testify as to his observing the people making the agreement, they don't sit around and hold a meeting, the existence of the conspiracy is evidenced, usually, by isolated acts and different manifestations which may occur here and there and it is a question for the jury as to whether that adds up by circumstantial evidence to proof of the existence of the conspiracy about which there usually is no direct evidence at all.

You know, whether I, to the extent I have a responsibility, on the jury, will believe any of this evidence and how it will actually turn out I don't have any idea because I haven't heard the cross examination and I haven't heard your side. But it does not advance us at all to say that these are isolated instances.

That is par for the course.

If we have accomplished anything today it is to have a display or an offer of proof or whatever you want to call it of clearly admissible evidence.

If Frank Maiorana gets on the stand and says at a certain date, whether it is 1967 or 1971 or whatever, that, "I talked to so and so in Philadelphia from GM and he told me that dealers shouldn't be selling to NABCOR," that is a piece of admissible evidence.

It may be rebutted, destroyed in one way or another, I don't know, but it is admissible evidence.

And if Mr. Bowling gets on the stand and testified that he heard Mr. English make that kind of a statement, it is admissible evidence.

And so forth and so on. We do not have problems of admissibility.

Last week we had a series of offers of proof on which there were serious questions of admissibility. Most of this stuff we had offered today really doesn't involve that problem. It is admissible and it is subject to problems, I'm sure, about credibility and so forth.

At least we are getting an idea. In other words, according to what was offered today, we are not going to trial, whenever that will be, on solely hearsay evidence if anybody thought we were.

There is something I mentioned last week and we just started to explore, the Court of Appeals has developed some rules about how you treat the admissibility of the hearsay evidence of a co-conspirator, an alleged co-conspirator.

The three most relevant cases which I have up here are -- there are several cases, but a recent discussion is United States against DaMato 493 Federal Second 359.

I guess the leading case is United States against Ganey, 417 Federal Second, 1116.

Then there is another case I may have mentioned going to call I cannot intelligently do what your Honor has asked.

When I know who I am going to call, I have no objection in telling you who I am going to call and what I expect them to say.

Let me give you a perfect example.

Mr. Person has gone on about Mr. English in Buffalo and Bob Bain Chevrolet. There are eight other dealers or whatever in Buffalo. Until I know what the case is in Buffalo as to all the dealers I will call I don't know what GM employees I would call.

THE COURT: What about Mr. English?

MR. KAPLAN: I anticipate if Mr. Bowling testified, Mr. English will testify and I would anticipate he will flatly deny everything that has been said here today.

MR. PERSON: The grand jury testimony would be helpful, your Honor.

THE COURT: You are not entitled to that.

MR. KAPLAN: Mr. English did not testify in the grand jury, your Honor.

THE COURT: I just want to emphasize, we are operating -- if this were a criminal case, the defense would sit back, there is no obligation of pre-trial

I. GM GROUP OF CONSPIRATORS

No.	Name and Address	See Pages
1	General Motors Corporation Broadway & 57th St. New York, N.Y.	throughout, 35, 234, 274, 280-304
2	General Motors Acceptance Corporation Broadway & 57th St. New York, N.Y.	34-5, 50, 60-4, 67, 76-80, 82, 97-100, 113, 120, 193-5, through Part V, 252-6, 269, 280-304
3	Frederic G. Donner, GM President and Board Chairman	60, 244, 252, 257, 261, 269, 280-304
4	James M. Roche, GM President and Board Chairman	60, 82, 244, 252, 257-8, 259, 261 269, 276, 280-304
5	Midtown Chevrolet-Pontiac (a GM Division) Broadway & 57th St. New York, N.Y.	33-4, 43-4, 70, 83, [illegible], 11 120, 123, 166, 173, [illegible], [illegible], 245, 262-4
6	Cadillac Motor Division of GM Broadway & 57th St. New York, N.Y.	37-8, 72-4
7	Circle Buick (a GM Division) 1731 Broadway New York, N.Y.	42-3, 96, 120, 256
8	A. C. Chevrolet 3085 Kennedy Blvd. Jersey City, N.J.	121-2
9	Adderley Pontiac 94-1/2 Bridge St. Carthage, N.Y. 13619	51-2, 122
10	Apuzzo Pontiac 1840 E. Tremont Ave. Bronx, N.Y. 10460	122-3
11	Asselin Chevrolet Warren, Rhode Island	123-4
12	Bob Bain Chevrolet, Inc. 5111 Transit Rd. Depew, N.Y. 14043	22, 124-8, 182, 294, 303-4
13	Bano Buick, Inc. 193 Main St. Mt. Kisco, N.Y.	96, 128-9, 167-8, 169-70

GM GROUP OF CONSPIRATORS (cont'd)

No.	Name and Address	See Pages
14	Barton Oldsmobile 427 West Ave. Lockport, N.Y.	60-1, 104, 129-31
15	Bates Pontiac Corp. 353 Grand Concourse Bronx, N.Y. 10451	38, 86, 131-2, 279, 293, 295, 300, 302
16	Paul Batt Buick, Inc. 5175 Broadway Lancaster, N.Y.	30, 116-7, 119, 132-3
17	Jerry Biggers Chevrolet 227 South Grove Avenue Elgin, Ill. 60120	133-4, 295
18	Block Pontiac, Inc. 7227 Bustleton Ave. Philadelphia, Pa.	134
19	Burke Motor Sales (Cadillac-Olldsmobile) 5100 Park Blvd. Wildwood, N.J. 08260	135, 287
20	Byrne Brothers (Chevrolet) Virginia Road White Plains, N.Y.	135
21	Glen Campbell Chevrolet, Inc. 5110 Main St. Williamsville, N.Y.	135-6, 139-40
22	Capitol Motors, Inc., Lewis Morganstern and Resolute Insurance Co. Hartford, Conn.	136-7
23	Harry B. Center Dodge-Cadillac & Harry B. Center, 321 Elm St. Biddeford, Maine	137-8
24	Cerota Chevrolet-Oldsmobile Pittsgrove Rd. Elmer, N.J. 08318	28, 87-9, 114-6, 138, 192
25	Chief Pontiac Rt. 46 Little Falls, N.J. 07424	86, 138-9
26	Clements-Gillogly Chevrolet (Hamister-Gillogly Chevrolet, Inc.) 1777 Union Rd. West Seneca, N.Y.	29, 74-5, 81, 116, 136, 139-40, 149, 243

GM GROUP OF CONSPIRATORS (cont'd)

No.	Name and Address	See Pages
27	Dave Cole Pontiac Airport Circle Pennsauken, N.J.	187
28	Colonial Cadillac, Inc. 1655 No. Olden Ave. Trenton, N.J.	40-1, 68-70, 140-4, 168-9, 188, 301
29	Omitted.	———
30	Cunningham Buick 322 South Broadway Yonkers, N.Y.	144-5
31	Curry Chevrolet Sales & Service, Inc. 727 Central Ave. Scarsdale, N.Y.	118, 145-6
32	Daniels Cadillac, Inc. 1327-51 Tilghman St. Allentown, Pa.	146, 268
33	Degnan Chevrolet 4101-59 Frankfort Ave. Philadelphia, Pa.	61, 94, 147, 186-7
34	Delaware Oldsmobile Philadelphia Pike Wilmington, Dela.	41-2, 148, 169-70
35	Ken Dengler Chevrolet-Oldsmobile, Inc. 216 E. Main St. Westfield, N.Y.	23-4, 148-9
36	Diver Chevrolet, 2101 Penn. Ave. Wilmington, Dela.	31, 149-50
37	Easton Pontiac Easton, Pa.	150
38	Tom Edwards Chevrolet, Grand Ave. Elmhurst, Ill.	150-1
39	Engel Buick 59 Locust Lockport, N.Y.	60-1, 104, 129-31, 151
40	Epstein Pontiac Chicago, Ill.	151

GM GROUP OF CONSPIRATORS (cont'd)

No.	Name and Address	See Pages
41	Henry Faulkner Oldsmobile, Inc. 1546 Cottman Ave. Philadelphia, Pa.	152-3
42	Ferman Oldsmobile 1307 West Kennedy Blvd. Tampa, Fla.	153
43	Ferraro Cadillac Baltimore Pike Springfield, Pa.	153-4
44	Foy Buick Chelton Ave. Philadelphia, Pa.	65-6, 95, 154, 162, 172
45	Dave Hallman Chevrolet, Inc. (Hallman, Atkins Chevrolet) 5533 Camp Rd. Hamburg, NY	81, 154
	Hamister-Gillogly Chevrolet (see Clements-Gillogly Chevrolet)	
46	Dave Heinrich Chevrolet 650 West Ave. Lockport, N.Y.	60, 104, 131, 155, 241-2
47	Higgins Buick , South Broad St. Ridgewood, N.J.	155
48	Higgins Oldsmobile-Cadillac Rt. 611 Doylestown, Pa. 18901	155-6
49	James Buick Ardmore, Pa.	156-7
50	Keller Chevrolet 3600 Genesee St. Cheektawaga, N.Y.	126, 157-8
51	Kline Pontiac Co. 651 N. Main St. Doylestown, Pa. 18901	95-6, 158, 200-1, 267, 271-2
52	Walter H. Kollmar Pontiac Rt. 130, South of Stockton St. Hightstown, N.J.	158-60
53	Krause Oldsmobile Rt. 70, Marlton Pike West Cherry Hill, N.J. 08034	113, 160-1, 177, 200-1

GM GROUP OF CONSPIRATORS (cont'd)

No.	Name and Address	See Pages
54	Kutner Buick, Inc. Castor Ave at Friendship St. Philadelphia, Pa. 19149	161-2, 188
55	Ray Laks Buick-Opel 120 Orchard Park Rd. West Seneca, N.Y. 14224	30, 163-4
56	Laks Chevrolet Corp. 1675 South Park Ave. Buffalo, N.Y.	30, 163-4
57	R. G. Lanthier, owner of Newburgh, NY Pontiac dealership 146 South Robinson Ave. Newburgh, N.Y.	164, 168, 258, 260
58	Robert E. Lee Pontiac Germantown Ave. Philadelphia, Pa.	164-5
59	Loehmann Chevrolet Scott Rd. Waterbury, Conn.	165
60	Luby Chevrolet Co., Inc. 105-20 Queens Blvd. Forest Hills, N.Y. 11375	85, 166-7, 173, 180, 192
61	Mark Buick Corp. 291 Tuckahoe Rd. Yonkers, N.Y.	128-9, 167-8
62	Martin Chevrolet 419 West Market St. Warren, Ohio	164, 168, 264-6
63	Marty Motors Corp. (Cadillac-Oldsmobile) 279 No. Bedford Rd. Mt. Kisco, N.Y.	128-9, 142, 148, 168-72, 273
64	Nathan Hale Buick Waterbury, Conn.	172
65	Norton Chevrolet 6800 Rising Sun Ave. Philadelphia, Pa.	173
66	Paragon Oldsmobile, Inc. 56-02 Northern Blvd. Woodside, N.Y.	173-4

GM GROUP OF CONSPIRATORS (cont'd)

No.	Name and Address	See Pages
67	Roger Penske Chevrolet, Inc. 4838 Chestnut St. Philadelphia, Pa.	174
68	Pitcairn Oldsmobile 1862 E. Lincoln Ave. Langhorne, Pa.	175
69	Plachter-Serubo Cadillac Adams Ave. at Roosevelt Blvd. Philadelphia, Pa. 19124	175-7
70	Pollino Buick-Pontiac, Inc. Bethlehem Pike and Washington Lane Ambler, Pa.	161, 177, 200-1
71	Queen City Chevrolet 414 E. Court St. Cincinnati, Ohio	86-7, 177
72	Raines Cadillac Co., Inc. Nesconset Highway Smithtown, N.Y. 11787	178-9
73	Randolph Chevrolet (now Distasio Chev.) Hadden Ave. Camden, N.J.	179-80, 187
74	Ranger Motors Corp. (Chevrolet) Main St. Naugatuck, Conn.	180-1
75	Reilly Pontiac, Inc. (now Ken Tribble Pontiac) 4900 Broadway Depew, N.Y. 14043	30-31
76	Rohrer Chevrolet Co. Admiral Wilson Blvd. Camden, N.J. 08101	67, 76-7, 94-5, 114, 127-8, 149, 180-8, 238
77	Herbert Rosenstock, Inc. (Oldsmobile) 275 Seventh Ave. (near 25th St.) New York, N.Y. 10001	188-9, 191
78	Ruckle Pontiac Co., Inc. and principal Robert Dillon 232 South Broadway Yonkers, N.Y. 10705	37, 41-2, 82-6, 118, 132, 188-92
79	Shore Chevrolet (now Nouhan Chev.) 12240 Joseph Campar Ave. Detroit, Mich.	28, 88, 114-6, 192

GM GROUP OF CONSPIRATORS (cont'd)

No.	Name and Address	See Pages
80	Matt Slap Chevrolet Cottman at Torresdale Avenues Philadelphia, Pa. 19135	65, 67, 89-93, 156-7, 173, 185, 192-6, 252-6, 282
80A	Soundview Chevrolet, New Roch. NY	266
81	Jack Stevens Buick, Inc. 2310 Delaware Ave. Buffalo, N.Y. 14216	196-7
82	Tinney Cadillac Corp. 2421 Main St. Buffalo, N.Y. 14214	197
83	M. P. Tomlinson (Oldsmobile-Cadillac) Main St., Lakeland, Florida	197
84	Union Park Pontiac, Penn. Ave & DuPont Wilmington, Dela.	197-8
85	Al Wilson Pontiac 555 West Street Rd Warminster, Pa. 18974	86, 95-6, 117, 159, 177, 199
86	Paul Wilson Chevrolet, Inc. 27 Main St. North Tonawanda, N.Y. 14120	182, 201
87	Wolfington Chevrolet 6758 Ridge Ave. Philadelphia, Pa.	83, 201-2
88	Yonkers Chevrolet 200 block, South Broadway Yonkers, N.Y.	118, 202
89	various GM dealers, as described herein	202-3 , 262
90	all other GM dealers, including the dealers who unilaterally refused to deal with Nabcor, Nabcor's franchisees or Nabcor's customers because of the franchise or sales agreements with GM and GMAC and the restrictions on the GM dealers imposed by GM-GMAC.	

II. PLAINTIFFS' WITNESS LIST
AS TO THE
LIABILITY OF THE GM GROUP

No.	Name, Position and Address	See Pages
1	Teresa Strimple Arent Purchaser of car from Nabcor Schiller St. Buffalo, N.Y. 14212	127
2	Dick Arnold Jim Culligan Pontiac, Inc. 8129 Main St. at Transit Williamsville, N.Y. 14221	22, 127
3	Robert L. Berg Manager and Director of GM Fleet and Gov't Sales Section; Director of Fleet Sales, Chevrolet Motor Division 18584 Chelton Dr. Birmingham, Mich.	23-6, 269, 297
4	Victor Bergelson 7700 block, Sycamore Ave. Elkins Park, Pa.	26-7
5	Herbert A. Bly Nabcor franchisee 10 Shadowstone Lane Lawrenceville, N.J. 08648	153, 197, 203
6	Badie G. Bodiya Nabcor franchisee 14440 Northfield Oak Park, Mich.	28, 138, 192
7	Donald Bolling Nabcor franchisee moving to Buffalo area	28-30, 132, 139, 149, 164, 184, 202
8	Thomas E. Casey Purchaser of car from Nabcor 50 Dutchess St. West Seneca, N.Y.	30-1
9	Charles Cohen Nabcor employee and franchisee 112 Norben Rd. Monsey, N.Y.	132, 172, 202
10	Albert E. Collier Cadillac National Distribution Manager General Motors Corporation Detroit, Mich.	31

WITNESS LIST, GM GROUP (cont'd)

No.	Name, Position and Address	See Pages
11	Connecticut Automotive Trades Association, co-conspirator 18 North Main St. West Hartford, Conn.	203-4
12	Joseph A. Crowley Purchaser of car from Nabcor 1716 Howland St. Wilmington, Dela. 19805	31, 149-50
13	Frank J. Crowne, Esq. Nabcor franchisee 16200 Audubon Lane Bowie, Md. 20715	203
14	Joseph Czoc[illegible]a Purchaser of car from Nabcor Florida, 813-[illegible]42-9054	182, 201
15	Frederic G. Donner, defendant GM President and Board Chairman General Motors Corporation 767 Fifth Ave. New York, N.Y.	32-[illegible], 280-304
16	Hubert B. DuPuis Zone Product Distributor, Cadillac Philadelphia Zone 500 Sherwood Dr. Cinnaminson, N.J.	32
17	Walter J. Englert Fleet Representative for Don Allen Chevrolet; and Fleet Sales Manager for Passenger Cars, Midtown Chevrolet- Pontiac, a Division of GM 17 Dandy Dr. Cos Cob, Conn. 06807	33-4
18	General Motors Acceptance Corporation, defendant 767 Fifth Ave. New York, N.Y.	34-5, 252-6, 269, 280-304
19	General Motors Corporation, defendant 767 Fifth Ave. New York, N.Y.	35, 234, 274, 280-304
20	William H. Gordon, Jr. Cadillac Philadelphia Zone Manager 1008 Annapolis Dr. Cherry Hill, N.J.	35-6

WITNESS LIST, GM GROUP (cont'd)

No.	Name, Position and Address	See Pages
21	Peter A. Gordon Exec. Vice President of the Greater New York, Long Island and Westchester Automobile Dealers Association 279 E. 44th St. New York, N.Y.	37-40, 178, 191
22	Mildred Hartsough Fleet Clerk, Colonial Cadillac, Inc. 476 South Logan Ave. Trenton, N.J.	40-1, 144
23	Robert B. Heim, plaintiff Nabcor franchisee 719 Prospect Ave. Bethlehem, Pa. 18018	150, 202
24	Rev. Herman S. Hirtle Purchaser of car from Nabcor YMCA 139 North 11th Street Lincoln, Nebr. 68508	41-2, 148
25	Louis H. Jamele (deceased), plaintiff Nabcor franchisee	165, 172, 180, 202
26	Nelson M. Karney NY Regional Director, Manager of National Accounts and Manager of Rental, Leasing and Commercial Sales in the GM Fleet and Government Sales Section, GM Marketing staff 28314 Skye Drive North Farmington Hills, Mich.	42-5
27	Lawrence F. Kelleher Fleet Sales Manager, Kemp Pontiac-Cadillac, Inc. 126 Robindale Dr. Berlin, Conn.	45-50, 278, 280-304
28	Rev. Eugene A. Kelly (not confirmed yet) Purchaser of car from plaintiff General Cape Vincent, Maine	50-3, 122
29	William G. Kemp Principal of Kemp Pontiac-Cadillac, Inc. 11005 Homeplace Lane Potomac, Md. 20854	53-60, 273, 275, 278, 280-304
30	Jack Kirschberger Principal of Ki-Po Motors West Avenue & Ohio St. Lockport, N.Y.	60-1, 129

WITNESS LIST, GM GROUP (cont'd)

No.	Name, Position and Address	See Pages
42	Edward Poole Principal of Ki-Po Motors West Avenue & Ohio Street Lockport, N.Y.	104, 129, 131
43	Ranger Motors Corp. (Chevrolet) by Service Manager Walter & other co-conspirator Main St. Naugatuck, Conn.	181
44	Roland G. Riopel Purchaser of Nabcor franchise Sand Piper Motel Old Orchard Beach, Maine	137
45	James M. Roche, defendant GM President and Board Chairman General Motors Corporation 767 Fifth Avenue New York, N.Y.	104-5, 280-304
46	John D. Rock GM Fleet Sales Mgr., Director of Fleet Sales for Buick Motor Division; Mgr. and Director of GM Fleet Section 148 Ledges Rd. Ridgefield, Conn.	105-13
47	C. David Rose Nabcor franchisee 10001 Oak Avenue Portage, Ind.	113, 202
48	David C. Samuels Citibank branch manager 20 Seneca Rd. Ossining, N.Y.	191
49	John D. Snyder Nabcor employee and officer Scott Run, Penna.	113-4, 153-4, 160-2, 165, 171, 175, 183, 185-7, 194-5
50	Mark A. Stolarski Purchaser of car from Nabcor 4983 Chadbourne Dr. Sterling Heights, Mich. 48077	114-6, 138, 192, 199-202
51	Dale Strimple, plaintiff Principal of plaintiff General Auto Sales & Leasing, Inc. Nabcor franchisee 1583 Sand Ridge Rd. Alden, N.Y. 14004	116-7, 122, 124-7, 131-3, 135-6. 139-40, 148-9, 154, 157-8, 163, 184, 196-7, 202, 278

WITNESS LIST, GM GROUP (cont'd)

No.	Name, Position and Address	See Pages
52	James W. Tracey, III, Esq. Nabcor Attorney Suburban Station Building, JFK Blvd. Philadelphia, Pa.	117-8
53	Ernest M. Turco Principal of plaintiff Nabcor of East New York, Inc. (formerly Turco Auto Sales & Leasing, Inc.) Nabcor franchisee 1204A Saw Mill River Rd. Yonkers, N.Y. 10710	118, 122, 128, 132, 135, 145, 167- 171-2, 202, 278
54	Victor A. Vanderzee Nabcor franchisee 333 Florence Ave. Hawthorne, N.J.	155, 202
55	A. L. Williams Director of defendants Citibank and GM and/or other officials of Citibank 399 Park Ave. New York, N.Y.	119
56	Shelton C. Wills Associated with plaintiff General Auto Sales & Leasing, Inc. Nabcor franchisee 2523 Parker Blvd. Tonawanda, N.Y. 14150	119, 132, 202
57	Arnold W. Wonsever Founder and Principal, United Auto Brokers 1603 Bushwick Ave. Brooklyn, N.Y. 11207	119-20
58	Alfred J. Young, Sr., plaintiff Nabcor franchisee 8730 Black River Rd. Watertown, N.Y. 13601	122, 202, 227

III. FOUNDATION EVIDENCE AGAINST GM, GMAC, DONNER AND ROCHE

NON-HEARSAY EVIDENCE AGAINST DEFENDANTS GM, GMAC, DONNER AND ROCHE (TO LAY FOUNDATION FOR ADMISSIBILITY OF TESTIMONY AS TO HEARSAY STATEMENTS MADE BY OTHER CO-CONSPIRATORS)

In addition to defendants GM* and GMAC*, plaintiffs plan to call the following witnesses to testify on behalf of plaintiffs to establish the scope of the contract, combination and conspiracy, and the objects and parties or members thereof:

			See Pages
1.	Dick Arnold	**	22
2.	Robert L. Berg	**	23-6
3.	Victor Bergelson		26-7
4.	Eddie G. Bodiya	**	28
5.	Donald Bolling	**	28-30
6.	Thomas E. Casey		30-1
7.	Albert E. Collier		31
8.	Joseph A. Crowley	**	31
9.	Frederic G. Donner	**	32-3
10.	Hubert B. DuPuis		32
11.	Walter J. Englert		33-4
12.	William H. Gordon, Jr.		35-6
13.	Peter A. Gordon	**	37-40
14.	Mildred Hartsough	**	40-1
15.	Rev. Herman S. Hirtle	**	41-2
16.	Nelson M. Karney		42-5
17.	Lawrence F. Kelleher	**	45-50
18.	Rev. Eugene A. Kelly	**	50-3

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* pp. 34-5.

** See Part I for addt'l pages.

			See Pages
19.	William G. Kemp	**	53-60
20.	Jack Kirschberger	**	60-1
21.	Donald R. Kurtz		61-4
22.	Anthony Maiorana	**	64-8
23.	Frank Maiorana	**	68-98
24.	Alfred H. Moore	**	98-100
25.	Albert T. Olson		100-4
26.	Edward Poole	**	104
27.	James M. Roche	**	104-5
28.	John D. Rock		105-13
29.	C. David Rose	**	113
30.	John D. Snyder	**	113-4
31.	Mark A. Stolarski	**	114-6
32.	Dale Strimple	**	116-7
33.	James W. Tracey, III, Esq.		117-8
34.	Ernest M. Turco	**	118
35.	A. L. Williams		119
36.	Shelton C. Willis	**	119
37.	Arnold W. Wonsever		119-20

A subpoena duces tecum will be served on each of GM, GMAC, Donner an Roche for the production of the following documents, to be offered by plaintif as evidence:

1. GM franchise or sales agreement with each GM franchisee identified as a co-conspirator in Part I covering all relevant dates;
2. Warranty agreements covering all cars manufactured by GM as to model years 1960 to the present;

PETER A. GORDON: From transcript of deposition on 12/12/74. Gordon is the Executive Vice President of The Greater New York, Long Island and Westchester Automobile Dealers Association ("NY ADA"). (Ex. 1-4, 6.) During 1966-67, Frank Mirenda of Frank Chevrolet (located in North Tarrytown, N.Y.) was President of the NY ADA (Tr. 4). Robert Dillon of Co-Conspirator Ruckle Pontiac was a member of the Board during 1966-67 (Tr. 6). The NY ADA had no members who were not franchised dealers (Tr. 7). This was according to policy of the NY ADA (Tr. 7). Also, H. Stern of Stern Motors, was a director of the NY ADA and a director of the Better Business Bureau (Tr. 9). Gordon previously worked for the Cadillac Motor Car Division of GM in Manhattan from 1955-58, as branch manager of the 57th Street and Broadway branch (Tr. 10). Also, he worked for Packard Motor Car Company until 1941 as new-car order specification manager (Tr. 11). Gordon attended and prepared the minutes of a meeting of the directors of the NY ADA on 12/14/66 (Tr. 12). The minutes reflect that the "matter" of Nabcor was referred to the National Automobile Dealers Association (NADA) for action (Tr. 12-3). Gordon put that information into the minutes (Tr. 13). Other dealers were present at the meeting, including Robert Dillon (Tr. 13). Gordon had visited Nabcor in Westchester County during 11/66, approximately (Tr. 14). Gordon knows of no new-car dealers who advertise in publications which are distributed predominantly to readers located outside of the dealers' own areas for sales responsibility to the manufacturer, as set forth in the dealers' franchise agreements (Tr. 16). When Gordon prepared his report on Nabcor, he did so for the Board of Directors of the NY ADA (Tr. 17). The NY ADA has no copy of the report. He mailed the report to the Board of Directors and about 30 other persons, including Robert Dillon (Tr. 17). Morty Bock of Flatbush Pontiac (who communicated with the NY BBB about Nabcor —CEP Note) at one time was a director of the NY ADA. (Tr. 18). The Cadillac Division of GM at Broadway and 57th St. was represented on the NY ADA Board of Directors prior to its recent takeover by Potamkin Cadillac (Tr. 20). Gordon questioned Nabcor about its ability to get cars through fleet and leasing agreements because to the best of Gordon's knowledge a car must be owned by a leasing company three to six months before it can be sold. That was the policy when he worked for the Cadillac factory. A leasing purchaser could not sell the car for six months. Gordon doesn't recall why Exhibit # 1 (NY ADA Bulletin) has a statement that United Buying Service and United Auto Brokers were considered a serious problem according to NY ADA President Frank Mirenda (Tr. 24). Autombile dealers complained about the relationship between United Auto Brokers and various franchised dealers (Tr. 25). The NY ADA had dealers complain about franchised dealers selling new cars to used car dealers (Tr. 26). During 1964, Gordon advised dealers that new-car dealers were selling cars to used-car dealers (Tr. 26-7), and he distribut the information to all of the members of the NY ADA (Tr. 27). The NY ADA bulletin is sent to every member of the NY ADA (Tr. 27), other automobile dealer associations throughout the country (Tr. 27), including the NADA (Tr. 28), and to local factory people including Cadillac personnel (Tr. 28). Gordon does not know why he stated in a NY ADA bulletin that the factories would look at these transactions of franchised dealers selling new cars to used car dealers with a slightly jaundiced eye (Tr. 28). Gordon may have seen a copy of the Nabcor franchise agreement when he visited Nabcor. Gordon prepared the 3/30/66 bulletin in which he stated that a non-franchised discount reseller of new automobiles in Nassau County may be a threat to the new automobile franchise dealer system (Tr. 32). This organization, Flo-Ben Auto Discount Division, Inc., was advertising new cars with a very low price (Tr. 33). Members of the NY ADA are the dealershi themselves (Tr. 35). Bates Pontiac Corporation became a member of the NY ADA during 1966 (Tr. 36). An allied membership in the NY ADA is a company or person other than a franchised dealer (Tr. 36). First National City Bank was an allied member during 1966-67 (Tr. 36-7) and received a copy of the bulletin (Tr. 37). A list of all members and all allied members during 1966 and 1967 was produced by Gordon. Grand Ford was a member of the NY ADA during 1966 (Tr. 38). The NY ADA worked with the Better Business Bureau of Metropolitan New York ("NY BBB") in the establishment of selling standards (Tr. 38-9). Gordon met with Mr. Troise of the NY BBB many times (Tr. 39) and with Mr. Jackson, President of the NY BBB before 3/30/66 (Tr. 39-40). The last meeting with Troise included the New York Attorney General (Tr. 40) and many franchised dealers (Tr. 40). They met in a hotel room (Tr. 41). Gordon quite possibly saw the three BBB reports on Nabcor. Gordon receives copies of the BBB's publication Spotlight from the NY BBB, but does not recall the 4/21/67 Spotlight article about automobile brokers (Tr. 42). Gordon knows Mr. DeLacey of the Buffalo Automobile Dealers Association ("BADA") but does not recall having seen the BADA Bulletin No. 659 dated 9/29/67 or having discussed Nabcor with DeLacey (Tr. 44-5). Mr. Gordon knows John Conley of the NADA but cannot recall ever having spoken with him about Nabcor (Tr. 45). Gordon sent copies of the NY ADA bulletins to other automobile dealer associations (Tr. 46). The NY ADA will, at the request of the NY BBB, recommend influential, successful franchised dealers to become directors of the NY BBB, such as Morty Bock and Harold Stern and Jerome McDougas, of Rupp Chevrolet (Tr. 48-9). Gordon spoke with Arthur Startz, Vice President of the NY BBB. Gordon sent a copy of his letter dated 10/21/66 about Nabcor to Troise of the NY BBB because Gordon knew he was interested in Nabcor. Gordon learned that Nabcor concentrated on used car dealers (Tr. 53). Gordon understood there was a decision against GM in a California case (Tr. 54). Gordon based his decision on Nabcor on the fact that the Nabcor operation seems pretty legal (Tr. 54). Gordon believed that it would be a hell of a note if all of the larger used-car dealers were to suddenly become new-car agents (Tr. 54). And that it would adversely affect the members of the NY ADA (Tr. 54). The letter was sent to directors and past presidents of the NY ADA to advise them on the Nabcor situation. Quinn of Nabcor had told Gordon that Nabcor's franchisees were functioning as brokers as distinguished from dealers (Tr. 55). Gordon learned from Nabcor that to avoid having its franchisees licensed as dealers, Nabcor was transferring the cars upon registration, using an MV-50. The subject of Nabcor came up at a Chrysler Dealer Council meeting and Chrysler stated they had no leasing agreement with Nabcor (Tr. 57), according to a statement made by one of the directors at the NY ADA board of directors meeting on 12/14/66 (Tr. 57-8). One of the dealers said it was a result of the NY ADA letter about Nabcor dated 10/21/66 (Tr. 58-9). The minutes state that the matter of Nabcor is referred to the NADA for action with the factories, but Gordon has no personal recollection of any such reference to the NADA (Tr. 59). And Gordon has no reason to believe that the reference did not occur (Tr. 59).

MILDRED HARTSOUGH: Hartsough, title clerk in Colonial Cadillac, testified in 1973 during the hearing on the plaintiffs' motion for a prelimina injunction. As title clerk she processes titles and all kinds of documents, does the billing and financial contracts, and assists in getting the fleet and retail cars delivered (Tr. 107). The Nabcor car was ordered as a fleet car during November, under the November allotment. Vice President Murray said that it was a fleet transaction, but the order came from Colonial's own retail allotment because Nabcor has no special fleet allotment and Colonia was never given a car by GM specifically for Nabcor. This reduced by one car the number of cars available to Colonial for retail resale (Tr. 109). The title to the yellow Cadillac was put in the name of Colonial's leasing which the fleet user agreed to do certain things. Following 1947, it was changed to a "fleet user certificate" (Tr. 71-2). The credit of the user is not a factor taken into account when issuing a fleet certificate (Tr. 73). On 1/31/68, Karney prepared a letter to FM stating that Nabcor was not eligible for a fleet certificate (Tr. 75). This letter was based on Olson's letter to Karney dated 1/26/68 (Tr. 75). Karney knew that Nabcor was having problems with a Chevrolet Zone official in Buffalo (Tr. 76-7) but Karney did not discuss with any persons what investigation might be undertaken to determine the accuracy of the Maiorana allegations and Karney did not himself investigate the allegations (Tr. 77) because this was not Karney's area of responsibility and Karney does not know who at GM has the authority to investigate (Tr. 77-8). Karney does not remember whether FM ever said that Nabcor had even one car registered in its name (Tr. 79). Based on the three meetings with FM, Karney states that Nabcor was seeking a fleet certificate because of a conversation between FM and Mr. Belcher, Assistant to the GM Chairman of the Board; FM stated to Karney that if Nabcor obtained a fleet certificate, Nabcor's problems with Chevrolet dealers in Buffalo might be alleviated; FM stated that the original purpose of his discussions with Belcher was to correct the actions of the Chevrolet dealers in the Buffalo area, probably; FM stated that in his opinion certain actions by GM employees in the Buffalo Zone were the reason that certain Chevrolet dealers in the Buffalo Zone were refusing to supply cars to Nabcor or Nabcor franchisees, and this is why FM went to Belcher (Tr. 81-3). The GM Divisions were responsible for the entire administration of the fleet rebate or allowance program, including who was entitled to receive the rebate (Tr. 85).

LAWRENCE F. KELLEHER: (1) Kelleher was the fleet sales manager for Kemp Pontiac-Cadillac, Inc. ("Kemp"), a Cadillac and Pontiac dealer in

Newington, Conn., in the Boston Zones of Cadillac and Pontiac, and was employed by Kemp from 4/67 to 2/69 or 3/69. (2) Kemp was unable to (i) sell Cadillacs on a retail basis for delivery outside of Kemp's territory because of the basis for determining GM's retail allotment to Kemp for the next model year; (ii) advertise Cadillacs or Pontiacs outside of Kemp's territory; (iii) sell cars under fleet allotments to anyone other than the fleet certificate holder who ordered the car through Kemp; and (iv) sell on a "fleet" or wholesale basis to persons who did not have or qualify for a GM fleet certificate. (3) The Cadillac Zone allotted cars to Kemp for retail sale, which retail allotment was told to Kemp orally by the Zone roadman (Lyle Blossom) or by telephone conversation with the Zone Distribution Manager, and was then confirmed by the Zone in writing to Kemp by GM Zone's mailing to Kemp each month of the "30-day Forecast". Kemp was allotted approximately 10-11 Cadillacs each month (which ranged from a low of 6-7 to a high of approximately 14). (4) GM let Kemp know regularly by its Zone personnel that GM insisted strongly that the cars allotted to Kemp for retail resale were to be sold in the area designated in GM's agreement with Kemp as Kemp's territory (the "territory") or risk a reduction in Kemp's retail allotment. Unless Kem sold and delivered all of its retail allotment in Kemp's territory in a model year, GM indicated that Kemp would obtain from GM a smaller allotment of Cadillacs for the next model year. Inasmuch as Kemp was limited in the number of Cadillacs it could obtain from Cadillac Zone, this sales requiremen within Kemp's territory prevented Kemp from selling any of its retail allotment of cars to anyone for delivery outside of Kemp's territory; otherwise, Kemp would risk losing its retail allotment by the same number of cars in the next model year. (5) To enable a volume purchaser of cars to buy car from Kemp on a fleet or wholesale basis, Kemp was required to prove to GM tha the purchaser had a certain minimum volume of new car purchases and was eithe a rental company, leasing company or a volume user (such as a large company with many salesmen using the company's cars). Upon approval by GM of the application for a fleet certificate, GM would issue a fleet certificate to the purchaser and would give the purchaser a new "fleet allotment" of cars. If a volume purchaser did not have a fleet certificate or a fleet certificate number, no fleet allotment could be obtained from GM and any sales by Kemp would have to be made out of Kemp's retail allotment of cars. (6) The fleet certificate holder's allotment did not belong to the dealer, but was transferable by the fleet purchaser from one dealer to another, from whom the fleet purcher could choose to order one or more cars chargeable to the overall fleet allotment of the fleet certificate holder. The dealer through whom a fleet order was placed would indicate to the factory the fleet certificate number of the fleet certificate holder. The dealer was not free to sell the car to any other purchaser (whether retail or fleet sale) in absence of any agreement, possibly, or any default by the original fleet purchaser who ordered the car. The fleet allotment is not a number of cars which a dealer is free to sell at retail or on a fleet basis to any purchaser, but only to the purchaser who obtained the fleet allotment (subject to previous exceptions). (7) No cars could be ordered by Kemp on a fleet allotment basis without Kemp first telling Cadillac Zone the name of the fleet purchaser and the number of the purchaser's fleet certificate. If an attempted fleet order by Kemp did not have a fleet certificate number accompanying the fleet order by Kemp, the GM Zone would send back the order for a fleet number. Without the number, Kemp was required to sell any Cadillacs or Pontiacs out of Kemp's "retail allotment", according to Zone Man Lyle Blossom (as to Cadillacs). After issuance of the fleet certificate, GM would allot cars to the fleet certificate holder, which permitted the holder to order cars through any dealer he designated. But if the prospective fleet purchaser did not qualify for a fleet certificate, no fleet certificate would be issued and the fleet purchaser would not be allotted any cars on a fleet allotment basis. In such event, any sale to the fleet purchaser would have to be made out of the dealer's retail allotment of cars which was limited in number (at least as to Cadillacs) and therefore difficult to make from an economic or business standpoint. The markup on a fleet sale of a Cadillac was as low as $250, plus the 2% holdback, which would bring the fleet differential over the dealer's absolute price up to $450 or so over Kemp's cost. (8) Kemp never obtained any fleet allotment for any of its fleet customers during the period even though Kemp had submitted an application in 1968 for a fleet certificate and a fleet allotment for Atlantic Machine and Tool, Inc. Kemp's President, William G. Kemp, told Kelleher that Kemp was notified by the Cadillac Zone that Atlantic Machine and Tool, Inc. ("Atlantic") did not qualify for a fleet certificate and that the Zone denied Atlantic a fleet allotment, and that GM needed a fleet certificate in order for Kemp to get extra cars to sell to Atlantic. Kelleher supplied the automobile purchase statistics for Atlantic for several years, but the GM Zone turned Atlantic down for a fleet certificate and refused the fleet allotment of extra cars for Kemp to sell to Atlantic. Also, Mr. Kemp told Kelleher that the GM Zone turned down an application for a fleet certificate for affiliate Intercontinental Leasing Corp., a company in the car rental and leasing business using about 8-10 cars at any one time, but purchasing about 20 cars per year because of the turnover of cars. (9) No time of the year was required by GM for the submission of applications for fleet certificates. Prospective fleet purchasers who applied for fleet certificates during the middle of the model year would be granted a fleet certificate (if qualified) without any limitation known to Kelleher. Kemp and other GM dealers were told by GM that they could look for new fleet business at all times of the ye

(10) Every order submitted by Kemp to GM was marked at the top of the order form by the checking of one of the following items of information: Pre-sold retail; Stock; Fleet; or Rental. And every fleet order of Kemp included the name and fleet number of the fleet purchaser. Fleet orders by Pontiac fleet

customers obtained a preferential treatment in handling, by the expediting of manufacture and delivery, according to Pontiac Zone. We called the Zone each time to alert them to a fleet order coming from Kemp. When fleet orders were delivered to Kemp, the paperwork was always identified as to the name of the particular fleet customer. (11) No fleet cars allotted by GM to a fleet certificate holder could be sold by the dealer (whether on a retail or fleet basis) to any other customer because the car was allotted to and designated for the specific fleet certificate holder for whom the car was ordered without the permission, possibly, of the fleet certificate holder. (12) GM has never solicited any fleet business for the benefit of Kemp, to Kelleher's knowledge, and GM has not directed any fleet business to Kemp, even though Kemp had Kelleher as a fleet sales manager and an additional fleet employee (Jerry Hughes) who was an expert in fleet sales. New Cadillac fleet business of Kemp was refused by Cadillac Zone, which prevented Kemp from doing the fleet business, by GM's refusal to give Kemp's customer (Atlantic) a fleet certificate and allotment. Inasmuch as fleet sales are made at reduced prices, and because no fleet allotment was granted, the sale to Atlantic could not have been made on a fleet basis by Kemp. Kemp would have lost money if it made the fleet (wholesale) sale out of its retail allotment, which was limited in number to about 10-11 Cadillacs per month. (13) When Kemp was located in New Britain, Conn. (1965-6), Kelleher was working for the New Britain Herald, a newspaper, and Kelleher was told by Mr. Kemp that he was not allowed by the GM Zone to advertise either new Cadillacs or Pontiacs outside of the New Britain metropolitan area. This prohibition on dealer advertising was known to all GM dealers — various GM dealers told Kelleher to such effect. No Cadillac or Pontiac dealer to Kelleher's knowledge ever ran new-car advertising in newspapers, or on radio or television, in areas outside of the dealer's own territory. Kelleher knew about this as a newspaper advertisement solicitor from his contacts with various GM dealers — that the dealers were prevented by GM from advertising in newspapers outside of their respective territories. (14) The freight charge or destination charge added to GM's price for Cadillacs and Pontiacs was required to be paid by Kemp, even when Kemp picked up a car at the GM Zone (in Allston, Mass., 100 miles away), and could not be avoided by Kemp's use of its own means of transportation. Kelleher will testify on the structural aspect of GM-GMAC from the GM dealer's standpoint, as outlined in Part V.

REV. EUGENE A. KELLY: Rev. Kelly purchased a 1969 Pontiac Catalina station wagon for school use through plaintiff Al Young on or about 2/12/69. Al Young was the lowest bidder. Although Rev. Kelly has purchased new cars for school use previously and never had to pay the federal excise tax before, Young asked Rev. Kelly to pay the tax ($235) and the selling dealer would fill out the required tax exemption form and forward it to GM so that GM could refund the $235 to Rev. Kelly. Accordingly, Rev. Kelly paid the additional $235. Rev. Kelly did not receive the refund by 5/15/69 and on that date wrote a letter to Pontiac Sales Division, Pontiac, Michigan (12497 and GM doc. 102, slight differences) giving the serial number of the Pontiac and stating the name of the selling GM dealer: Brown Motor Sales, Inc., 2262 Delaware Ave., Buffalo, NY. Also, Rev. Kelly said the name General Auto Sales & Leasing, Inc. appeared on the warranty plate as the owner of the car. Rev. Kelly requested that the refund be expedited. By letter dated 6/4/69 (103, 104), Pontiac's National Customer Relations Manager said he was puzzled by the mentioning of the names of Naboor, Young and General, and that "Whether these various business firms have contributed to the delay, I cannot say, but in any event, I am referring your letter to our zone office at Buffalo". On 6/7/69, Rev. Kelly executed a excise tax certificate for non-profit educational organizations (119) at the request of the GM Buffalo Zone, which certified that the car was purchased for school use. On 1/7/70, the Buffalo

Pontiac Buffalo Zone wrote (12495, 132) to Rev. Kelly and advised that "the policies set forth on this type of a repair on a used car purchase does not apply to this vehicle as the warranty obligations have not been complied with in as much as the warranty has never been transferred. This must be accomplished within thirty (30) days or 1,000 miles from date of second purchase. At this time, there is no manufacturers second owner warranty on this vehicle, as a transfer evidently has never transpired. We, therefore, regret that we cannot assume this expense under the manufacturers warranty. We trust that this will answer your inquiry...." Rev. Kelly forwarded the originals of his receipt (12496), Pontiac letters 8/18/70 (12494) and 9/3/70 (12495) and a rough copy of his 5/15/69 letter (12497) to Al Young. Nobody has refunded the $32.27 paid by Rev. Kelly for repair of the water pump.

WILLIAM G. KEMP: Wm Kemp was the founder, President and principal shareholder of Kemp Pontiac-Cadillac, Inc. ("Kemp"), a Connecticut corporation incorporated in 1964 and a Cadillac and Pontiac dealer in New Britain, Connecticut (for 10 months commencing in 1965) and then in Newington, Connecticut (in the Boston Zone of Cadillac) from 11/10/67 to 4/19/69. Kemp's Dealers Selling Agreement (Kemp's "GM franchise") designated an area surrounding New Britain and Newington (generally, the Hartford area) as Kemp's "Area of Sales Responsibility ("Kemp's territory"). Kemp did in excess of $19,000,000 worth of net sales in its first 36 months of existence. (2) Based on ¶¶ 3-18 of Wm Kemp's testimony below, Kemp was highly discouraged by GM from (i) selling Cadillacs on a retail basis for delivery outside of Kemp's territory; (ii) advertising Cadillacs outside of the Kemp territory; (iii) selling any fleet-allotted cars to other than the designated fleet certificate holder who ordered the car; (iv) and selling on a fleet basis to persons who did not have or qualify for a GM fleet certificate. Also, Intercontinental Leasing Corp.

("Intercontinental") was restrained from participating in the rental car busine by GM Cadillac Division's denial of a fleet certificate to Intercontinental. Also, GM's treatment of orders by fleet certificate holders discriminated against franchised dealers in their efforts to sell Cadillacs at retail. (3) Wm Kemp was the founder, President and a principal shareholder of Intercontinental, a Connecticut corporation, with its principal place of business in Newington, Connecticut, engaged from 1967 to 1969 in the business of renting automobiles on a daily or weekly basis to service (repair-work) customers of Kemp and others. (4) Wm Kemp will testify that there is a substantial number of franchised dealers of GM who live in constant fear of factory reprisals including re-allocation of automobiles and non-renewal or cancellation of franchises. (5) The Cadillac Zone (located in Chestnut Hills, Mass.) allotted 6-9 Cadillacs each month to Kemp for retail sale. (6) Of the Cadillacs allotted by the Cadillac Zone to Kemp for retail resale, Kemp was required by its GM franchise to sell Cadillacs each year in the Kemp territory to avoid a cancellation or non-renewal of the GM franchise which was based upon Cadillac standards for retail sales of Cadillacs in the Kemp territory. Unless Kemp sold all of its retail allotment in the Kemp territory in the prior year, Kemp was threatened it may not obtain an equal allotment for the succeeding year. Inasmuch as Kemp was limited in the number of Cadillacs it could obtain from the Cadillac Zone, the low sales allocation with the Kemp territory highly discouraged Kemp from selling any of its retail allotment of cars to anyone (whether on a fleet or retail basis) for initial registration as a new car outside of the Kemp territory; otherwise, Kemp could suffer a reduction in its retail allotment for the next year by a similar number of cars. Also, Kemp was threatened with a reduction in its retail allotment of the current model year to the extent the factory was required to pay Kemp a 5% rebate at the end of current model years on unsold new Cadillacs remaining in inventory. Kemp was threatened that if any new current model Cadillacs were not represented to GM to be sold (even though they were not in fact sold in many cases) a like amount of the new models would be deducted from the allotment of new model year Cadillacs shipped to Kemp. Kemp was therefore instructed by Cadillac to hide the remaining current model Cadillac carry over in order to receive the full allocation of new models and the factory avoided paying the 5% rebate to Kemp. (7) The GM fleet certificate is not just a means for GM to obtain marketing information, if it serves this purpose at all. The fleet certificate is a license for the holder (such as Hertz and Avis) to purchase new automobiles on a fleet (i.e., wholesale) basis through any willing GM dealer, whereas fleet purchasers who could not obtain a fleet certificate were unable to buy any cars at all through a fleet allotment, even though they may actually in some cases buy more cars than certain holders of fleet certificates. The fleet certificate is required by GM to obtain a fleet allotment of Cadillacs. Also, the fleet certificate entitled holders thereof to purchase parts on a wholesale basis from Kemp without exception, whereas parts would not be sold by Kemp on a wholesale basis to persons not possessing the fleet certificate. Kemp was following the instructions of GM set forth in the fleet certificate itself, which in no way suggests that dealers are merely "encouraged" or "permitted" to sell parts on a wholesale basis. Instead, the fleet certificate states that fleet certificate holders have the advantage of buying parts on a wholesale basis, which Kemp took to mean that Kemp was required to follow. No contrary instructions, oral or in writing, were ever received from GM. (8) A fleet certificate holder is given a fleet "allotment" by GM consisting of the number of cars the fleet certificate holder indicates to GM he possibly may need during the year (which number is usually equal to or greater than the actual expected requirements). Thus, the fleet allotment is not a limitation for the fleet certificate holder, unlike the dealer's retail allotment. The fleet certificate holder's allotment does not belong to the dealer, but is transferable by the fleet purchaser from one dealer to another, from whom the fleet purchaser may choose to order one or more cars chargeable t the overall fleet allotment of the customer. The dealer through whom a fleet order is placed will indicate to the factory or a dealer the name and fleet certificate number of the certificate holder, and the automobile will be built, and shipped to the ordering dealer designated by the specific fleet certificate holder. In no way is the franchised dealer free to sell this car to any other purchaser (whether retail or fleet) in absence of any subsequent default by the original fleet purchaser who ordered the car. Thus, the fleet allotment is not a number of cars which a dealer is free to sell at retail, or free to sell to any other fleet purchasers for that matter. (9) No cars would be ordered by Kemp on a fleet allotment basis without Kemp first telling the Cadillac Zone the name of the fleet purchaser and the number of the purchaser's GM fleet certificate. If the prospective fleet purchaser did not have a fleet certificate (that is, if its name was not on GM's National Fleet List) an application for a fleet certificate would be made by Kemp to Cadillac Zone, which would send out a Zone representative to inquire whether the prospective purchaser qualified for a fleet certificate. If found qualified by the Zone, GM would issue a fleet certificate and allot cars to the fleet certificate holder, thereby permitting a dealer to obtain extra cars (over the dealer's retail allotment) to the extent of the fleet purchaser's orders through the dealer. But if the prospective fleet purchaser did not qualify for a fleet certificate, no fleet certificate would be issued and the fleet purchaser would not be allotted any cars. In such event, any sale to the fleet purchaser would have to be made out of Kemp's (or other dealer's) retail allotment of cars which was limited in number, making the transaction impossible from an economic and business standpoint. The markup on a fleet sale of a Cadillac was approximately $400. If Kemp sold all of its 7 to 9 allocated cars per month on a fleet basis, Kemp would have derived a gross profit of only a small fraction of the profits Kemp would otherwise have obtained from retail sales of the same number of cars, which reduction in gross profits would have required Kemp to run at a substantial loss and soon go out of business. (10) Kemp never obtained any fleet allotment even though Kemp had submitted applications for fleet certificates and fleet allotments with respect to several prospective fleet (volume) users and also at least 2 customers of Kemp: 1. Atlantic Machine Tool, Inc. ("Atlantic"); and 2. Westwood Auto Leasing, Inc. (letter from Westwood to Kemp dated 7/18/66 and letter from Kemp to Cadillac Zone dated 8/3/67; also, letter from Kemp to Cadillac Zone dated 7/23/68. Kemp was notified by the Cadillac Zone that neither prospective customer qualified for a fleet certificate and the Zone denied Kemp a fleet allotment for both prospective purchasers. Lyle Blossom, then a Cadillac Zone official in Hartford told both Wm Kemp and Kemp's Fleet Sales Manager, Kelleher, that GM needed a fleet certificate in order for Kemp to get extra cars to sell to Atlantic on a fleet basis. Kelleher supplied the automobile purchase statistics for Atlantic for the previous several years, but the Cadillac Zone turned Atlantic down for a fleet certificate and Kemp was refused the fleet allotment of extra cars to sell to Atlantic. Also, Intercontinental was turned down by GM in 1967-8-9 for a fleet certificate for its rental and lease business, which has prevented Intercontinental from buying any Cadillac cars through GM dealers on a fleet basis. All cars had to be purchased out of the dealers' retail quotas at higher prices. (11) Cadillac usually requested that dealers submit applications for fleet certificates in the Spring of each year. However, prospective fleet purchasers who applied for fleet certificates in mid-year would be granted a fleet certificate if qualified and GM would supply the new fleet certificate holder with a supply of cars (fleet allotment) out of the fleet "pool", which was set aside by GM to meet the requirements of these new fleet purchasers. Kemp and other GM dealers were encouraged to look for new fleet business at all times of the year. (12) Every order submitted by Kemp to GM was marked at the upper right hand corner by the checking of one of the following: "Pre-sold retail", "Stock", "Fleet" and "Rental". The GM Zone required a fleet number for all fleet and rental orders. When fleet or rental orders were delivered to Kemp, they were identified as to the particular fleet certificate holder. (13) No cars allotted to a Cadillac dealer on a flee basis could be sold by the dealer (whether on a retail or fleet basis) because the car was allotted to and designated for the specific fleet certificate holder for whom the car was ordered. Only if the fleet certificate holder, after ordering a car through the dealer, refused to accept delivery for any reason would the car be available for sale to the dealer for sale (either on a fleet or retail basis). (14) Kemp was required by the Cadillac Zone to keep records of any fleet transactions and the data which qualified prospective fleet purchasers for the issuance of a GM fleet certificate for inspection by GM. (15) GM Cadillac Division has never solicited any fleet business for the benefit of Kemp, and has not directed any fleet business to Kemp, even though Kemp had one full-time fleet sales manager and one additional fleet employee. The only Cadillac fleet business which was generated by Kemp was refused by Cadillac, which prevented Kemp from doing the fleet business by GM's refusal to give Kemp a fleet allotment (See ¶ 10 above). Inasmuch as fleet sales are made at prices substantially lower than retail prices, if no fleet allotment is granted the sale cannot be made by the GM dealer. Kemp would have lost money if it made the fleet (wholesale) sales out of its retail allotment since such retail allotment was limited in number to about 7-9 Cadillacs per month. (16) Kemp and the other Cadillac dealers were heavily discouraged from advertising Cadillacs outside of their respective territories. This prohibition was well known to all Cadillac dealers and never repudiated by GM, notwithstanding the Pontiac and Cadillac letters to dealers (Pontiac letter dated 8/26/66) which advised dealers of the 8/18/66 decision in the California Discount Case: "... other provisions of the Judgment perpetually ... enjoin

General Motors on a nationwide basis from conspiring with any Chevrolet dealers or organization of Chevrolet dealers to restrict the sale of Chevrolet automobiles to or through any person offering such automobiles for sale, including discount houses." The letter also said "...Division personnel have been instructed not to discuss with any dealership's principals, officers or employes or with any dealer associations, their members, officers or employes, any activity of any other dealer involving the sale of our motor vehicles to or through discount houses, referral services or any other person or class of persons engaged in selling or offering automobiles for sale." (p. 2). This territorial prohibition was well known to all Cadillac dealers . No Cadillac dealer to Wm Kemp's knowledge ever ran advertisements in newspapers, or on radio or television, in areas outside of its own territory. The result would have been a severe reprimand by GM or possibly a cancellation or non-renewal of the Agreement with GM. (17) Even though Kemp repeatedly petitioned the Cadillac Zone officials for fleet certificates and fleet allocations for qualified fleet customers, Wm Kemp cannot recall being granted any such allocations for Kemp's fleet user customers or Wm Kemp's own Intercontinental. Kemp was further restrained by Cadillac from transferring existing fleet users as customers from GM dealerships to Kemp's dealership, even though such transfer was requested by the fleet user in writing (see letters from Kemp to U. S. Vitamin Corp. dated 2/20/68, Holiday Rent-A-Car to Kemp dated 1/3/68, Kemp to Holiday dated 1/8/68; Kemp to Cadillac Zone dated 1/9/68, Kemp to Holiday dated 1/12/68, Kemp to Cadillac Zone dated 2/20/68, Kemp (Kelleher) to American Cyanamid dated 2/20/68 and the Westwood letters described above. (18) The only other franchised Cadillac dealership who shared the territory with Kemp had an allotment of Cadillacs four to six times greater than Kemp even though Kemp's facilities were equal to or better than the favored dealer given the higher allocation by Cadillac. Repeated requests to Cadillac by

Kemp to increase its allocation of Cadillacs to be in line with that of its competitor was always refused by Cadillac. (19) Kemp was negotiating a $75 fleet price on Pontiacs during 7/68 with a major fleet account and GM's Pace of Pontiac Motor Division advised the account that $75 was too high and that by shopping among other Pontiac dealers the account could get a $50 price. Wm Kemp complained by telegram to Pontiac's General Sales Manager (telegram dated 7/25/68) about GM's interference, saying "Your Mr. Pace just lost us 50 car fleet by undermining our agreement in this manner. Appreciate reply. We will not sell for $50." By letter dated 8/5/68, Pontiac denied that Pace had told the major account it could purchase the Pontiacs for $50 over tis[illegible] GM was merely trying to develop more fleet business for all GM dealers. The account may have been trying to purchase Pontiacs on the same basis that it is purchasing other cars on a fleet basis to be as competitive as possible in their costs. (20) Wm Kemp will testify on the structural aspects of GM-GMAC from the GM dealer's standpoint, as outlined in Part V.

JACK KIRSCHBERGER: (See testimony under BARTON OLDSMOBILE; see foundation testimony of partner Edward Poole; and see GM Documents described under DAVE HEINRICH CHEVROLET to see how Kirschberger's testimony is foundatio testimony against GM, GMAC, Donner and Roche.) Kirschberger and Edward Poole are the principals of Ki-Po Motors on West Avenue in Lockport, New York, only a block or so away from Nabcor franchisee American Auto Brokers (Richard Owens) and from Barton Oldsmobile and Engel Buick. Ki-Po Motors was engaged in the used-car business, and had arrangements with Owens to purchase trade-ins at wholesale used-car prices. Mr. Barton, the principal of Barton Oldsmobile, was President of Lockport Automobile Dealers Association during 1967, when the events in question took place. Mr. Engle of Engel Buick was also an officer of the Lockport ADA during this time. David Smith, owner of the Lockport Retailer, a pennysaver newspaper, told Kirschberger and Poole during a meeting among Smith, Kirschberger and Poole that an officer or official of the Lockport ADA had told the Retailer that the dealer members of the ADA would not advertise in the Retailer any longer if the Retailer continued to let Owens advertise in it. Also, Engel told Kirschberger that Engel was very hot and upset about Nabcor franchisee Owens (American Auto Brokers), and that he was going to put Owens out of business.

DONALD R. KURTZ: Letter from attorney A. J. Zenoff to A. S. Bruch, V.P., GMAC in New York, dated 5/5/71 (Ex. 1 to Zenoff aff't) shows that Zenoff volunteered to GMAC-GM and the other defendants against Nabcor. Zenoff was in a business transaction with GMAC at the time, and at the same time represented Nabcor franchisee Claude Flanagan and others in the Flanagan group. Kurtz spoke with Flanagan who said that attorney Zenoff was looking into the possibility of bringing suit against Nabcor. Kurtz received a copy of a letter from Zenoff to Flanagan (with copies indicated to Nabcor franchisees Luke Austin, W. D. Watson, Wilbert Taylor, Philbert Wilcox, Warwick Conomy, Randall Lewis, Robert Myers, Alfred H. Moore, Donald Kurtz and David Rose), dated 6/15/71, saying that Zenoff "ha(s) been in touch with the New York attorneys for General Motors Corp. They are most interested in talking with you and the other people in our area who bought franchises from Nabcor. They feel that if they can prove fraud, ... it might focus the attention of the 'authorities' upon the actions of Nabcor." Kurtz received a copy of a letter from Zenoff to Flanagan dated 8/12/71 advising that the "General Motors Corp. attorneys are willing to meet with us during the week of September 13th". Kurtz received a copy of a letter from Zenoff to Lewis A. Kaplan, Esq., of Paul, Weiss, Rifkind, Wharton & Garrison, confirming "that a representative group will meet with you at our offices at 2:00 P.M. on September 14, 1971."

Kurtz received a copy of a letter from Zenoff to Flanagan, Moore, Kurtz and Rose, dated 9/9/71 postponing the meeting because the New York attorneys for GM could not make the meeting. Kurtz received a copy of a letter from Zenoff to Kaplan dated 9/22/71 stating that Zenoff's "clients have agreed to meet with you in my offices at 2:00 P.M., October 11, 1971." Kurtz received a copy of a letter from Flanagan to the 10 other Nabcor franchisees named above, dated 10/6/71, stating that "Zenoff has arranged a meeting between General Motors Corporation attorneys from New York City and persons invested in Nabcor Franchises from the Chicagoland area. It is their opinion that if they can establish evidence of fraud on the part of Nabcor, it will enhance our possibilities of obtaining favorable judgment in our case.", with a carbon copy indicated to Zenoff and Kaplan. Kurtz will testify that he does not know whether Zenoff was his attorney. Kurtz attended the 2-hour meeting, held in Zenoff's Office in Chicago on 10/11/71. Kurtz, Rose, Flanagan, Moore, 4-5 other Nabcor franchisees of Flanagan, Kaplan and another GM attorney (male) from New York were in attendance. The GM attorneys did not state that the action was brought as a class action or that Kurtz or any of the others were members of the alleged class. Nobody advised the Nabcor franchisees of the nature of Nabcor's claims against GM-GMAC or the other defendants. Zenoff never said at any time that he had a conflict of interest. Zenoff never discussed with Kurtz that GM-GMAC or any other persons were or may be liable for the damages suffered by Kurtz following his purchase of the Nabcor franchise. Zenoff, Kaplan and the other GM attorney elicited from Kurtz and the other Nabcor franchisees information about their alleged claims against Nabcor. The GM-GMAC attorneys offered during the meeting to give Kurtz and the other Nabcor franchisees, from time to time, information which could support the claims of the Nabcor franchisees against Nabcor as they acquired the information in their own defense in Nabcor's action against GM. The meeting left Kurtz with the impression that the GM-GMAC attorneys would like Kurtz and the other Nabcor franchisees to bring an action against Nabcor, particularly because the meeting was, from the standpoint of the Nabcor franchisees, to assist the Nabcor franchisees in deciding whether to sue Nabcor, and the GM-GMAC attorneys offered information support to the Nabcor franchisees in that regard. Kurtz received a copy of a letter from Kaplan to Zenoff, dated 10/15/71 thanking Zenoff and the "clients" "for your time, attention and cooperation last Monday. I look forward to hearing from you again after your clients have had a further opportunity to consider the matters which we discussed. As I indicated to you on Monday, I am enclosing both a list of attorneys representing Nabcor Franchisees who have sued Nabcor on claims similar to those of your clients and a transcript of a deposition of Frank Maiorana taken in one of those actions. As we acquire additional information which might be helpful to your clients we shall make it available to you." Kurtz received a copy of a letter from Kaplan to Zenoff dated 10/18/71 in which Kaplan enclosed a list of Nabcor franchise litigation which was inadvertently omitted from the 10/15/71 letter. See 10/18/71 list entitled "Nabcor Franchise Litigation", especially note 2 which states that the attorney for Nabcor franchisee Covello, "Mr. Moss, in addition to representing Mr. Covello, is District Attorney for Montgomery County, Pennsylvania, which includes Jenkintown, the city in which Nabcor is located". (Ex. 2 to Zenoff aff't.) Kurtz received a copy of a letter from Zenoff to Flanagan, Moore, Kurtz and Rose dated 11/11/71 enclosing the 10/15/71, 10/18/71 Kaplan letters and litigation list, which stated: Additional research of the law gives me the opinion that we possibly could file suit in our local federal court against Nabcor. I recently conveyed this idea to Claude Flanagan, who stated that he would check with all of you and advise me very soon as to whether or not you care to go ahead with the lawsuit. If you do, our firm will handle this on a percentage basis of 33-1/3% of the amount collected. ... We would need approximately $300 to get the matter under way. I would very much appreciate hearing from each of you as to whether or not you care to proceed, so that we can get our lawsuit prepared. Mr. Flanagan stated that he would contact each of you and let me know." Letter from Kaplan to Zenoff dated 10/10/71 saying: "I thought you would be interested in the enclosed clipping from the current Business Week. It reports on a new release issued by the SEC which indicates that sub-franchising operations such as Nabcor involve the sale of securities within the meaning of the Securities Act of 1933. In view of your clients' position as an area distributor with sub-franchising rights, it would appear possible that this release, together with pre-existing case law, may give them a broad range of remedies under the various securities acts. Now that your clients have had an opportunity to consider their position following our meeting in October, I wonder if it might be profitable for us to meet again and further discuss their experiences with Nabcor." (Introduce enclosure, BW Article.) (Ex. 3 to Zenoff Aff't.) Kurtz received a letter from Zenoff to each of the 11 Nabcor franchisees, dated 12/28/71, in which Zenoff enclosed a copy of Kaplan's 12/10/71 letter. Also, Zenoff sent a copy of the BW article to Flanagan, from whom the others may obtain a copy. Zenoff said "I would appreciate it very much if each of you would indicate to me whether or not you want me to follow through on this matter or drop it. I have written several letters to Mr. Flanagan, Mr. Moore and Mr. Kurtz and Mr. Rose and I have had no reply." Actually, Kurtz had decided after the 10/11/71 meeting was over not to pursue his claims against Nabcor because the information given to them was that Nabcor was in poor financial condition and any judgment against Nabcor would be worthless, as all persons at the meeting knew.

ANTHONY MAIORANA (1): AM will testify as to his background in the automobile business prior to 1966, and as to his activities as an officer and employee of Nabcor.

ANTHONY MAIORANA (2): AM was listening on the telephone when Jack Snyder of Nabcor talked with Wright of the Washington Star Action Line on 5/14/69 about customer Joseph W. Askew's complaint to Action Line concerning non-delivery of his ordered Corvette. Snyder told Wright that the car is delayed but that the dealer says the car is coming in. Wright then said that his Action Line has great connections with GM and can arrange for faster car deliveries. Wright said he would intervene directly with GM and obtain the ordered car. Snyder said go ahead.

ANTHONY MAIORANA (3): Nabcor broker McElroy advised Nabcor during 6/70 that Nabcor customer Joan McDonald was unable to obtain warranty work for her 1970 Chevrolet at Degnan Chevrolet, in Philadelphia. Degnan had previously sold 1 car to Nabcor, in 1966 (12484) and then refused to deal with Nabcor. AM then called T. J. Dougherty, Degnan's Service Manager, who said that he would have to call the factory to get GM in on the matter, because the car was not bought at Degnan. Dougherty called AM while GM's H. M. Fleagle, Chevrolet Philadelphia Zone, was at Degnan and said that Fleagle would not permit the requested warranty work. Saying that he was not going to debate the matter with AM, Dougherty put GM's Fleagle on the telephone. Fleagle told FM that the Chevrolet was not purchased by customer McDonald from a factory dealer but was purchased from Nabcor, which made McDonald a second owner and, therefore, not entitled to any warranty work. Accordingly, Fleagle was not approving the requested warranty work.

ANTHONY MAIORANA (4): During 1968-71, Nabcor had bought 20 cars from Foy Buick, located in Philadelphia. On 9/1/71, George Foy, principal of Foy Buick, called AM and said GM's Grover Durham, Buick Philadelphia Zone, is charging back $50 on each car Foy sold to Nabcor because Nabcor did not qualify for the fleet rebate. On or before 10/8/71, the Sales Manager of Foy Buick told AM that a Buick ordered for Nabcor's customer Calmine Becker of Yonkers Lumber was being held back by the factory. During this telephone conversation, the Sales Manager of Foy Buick told FM that Foy had the car but was told by owner George Foy not to give the car to Nabcor. Then, on 10/8/71, AM talked with George Foy by telephone. Foy said he wouldn't give Nabcor any more cars because Grover Durham of GM said Nabcor was not authorized by GM to buy cars and George Foy was told by Durham not to sell cars to Nabcor. AM asked Foy who said this at GM, and Foy said Grover Durham, at the Buick Philadelphia Zone. AM called the Buick Philadelphia Zone and spoke with Durham and asked why this happened, inasmuch as Durham knew that Nabcor had been buying cars from Foy. AM told Durham that Durham had talked with Jack Snyder when Nabcor started buying cars from Foy and had told Snyder that it was OK for Nabcor to buy Buicks from Foy Buick. Durham said that Nabcor was not accredited with GM and that Durham told Foy so. Nabcor did not get the Buick. AM asked Durham for the Buick Foy ordered from GM for Nabcor, but Durham said that he would not tell Foy to give Nabcor the car.

ANTHONY MAIORANA (5): On 12/13/67, one day before FM's first communication with GM's Belcher, Robert DiSimone, Director of the Philadelphi Regional Office of the Fleet Section and David Speece, Representative of the Chevrolet Philadelphia Zone, paid an unannounced visit to Nabcor's offices i Jenkintown, Pennsylvania and met with AM for 20-30 minutes. They introduced themselves as coming from the Chevrolet Zone in Bala Cynwood, Pennsylvania. AM did not know at the outset why they had dropped in. They asked many questions about the Nabcor automobile brokerage system. AM told them Nabcor sells new cars to consumers through the brokerage system, and that Nabcor would lease cars to consumers if Nabcor or its brokers had the opportunity.

work, and Nabcor is not a retail purchaser. Nabcor purchases for resale and Nabcor would not be considered a first owner. The GM official said he did not agree. He said the warranty does not cover Rev. Kelly, a second owner. FM does not know whether Rev. Kelly obtained his refund for the warranty work.

FRANK MAIORANA (43): In 1966, Nabcor bought 1 car from Degnan Chevrolet, then Degnan stopped dealing with Nabcor because Nabcor had no fleet certificate, Nabcor was bootlegging cars and GM told Degnan that it shouldn't sell cars to Nabcor. (See DEGNAN CHEVROLET.) In 1970, Nabcor franchisee McElroy sold a car to Joan McDonald. Ms. McDonald told FM that a major repair problem developed shortly thereafter, and that she took the car to Degnan Chevrolet for warranty work, which was refused because the car was purchased elsewhere and by Nabcor. FM spoke with the Manager of Degnan, to no avail. Then, AM talked with GM's Fleagle. Fleagle was the Service Representative of the GM Chevrolet Philadelphia Zone. Thereafter, FM called Fleagle at his Zone office and he told FM that GM was not going to do anything about the problem. GM would not direct Degnan to fix the car or obtain another dealer where the warranty work would be performed. FM said that there is supposed to be a 5-year warranty and the unused portion went to Ms. McDonald even if Nabcor was a first purchaser, and that GM is responsible for repairing the car under the warranty. Fleagle told FM that Nabcor was a reseller of cars, bootlegging cars, and that Nabcor shouldn't be selling cars. This makes Nabcor a first owner because Nabcor is not an authorized dealer and because of this GM could not honor the warranty and the customer would have to pay for the repairs herself. FM spoke again to Ms. McDonald and advised her to write the factory.

FRANK MAIORANA (44): Hilda Madden, employed in the fleet department of Rohrer Chevrolet, told Jack Snyder by telephone (AM and FM listening as

Bergelson and his group, including Bove director Alfred Freid, attempted to hold a Nabcor shareholders' meeting and vote FM and AM out of office. The meeting was invalid because of non-compliance with the Pennsylvania corporat law, according to Nabcor's attorney. Nevertheless, Bergelson and 5 others (including an armed person) entered the Nabcor offices at 101 Benson Manor, Jenkintown, Pa., and while keeping Nabcor's three employees from interfering, by revealing the gun, the Bergelson group took all of Nabcor's filing cabinets and business records (with limited exceptions). FM and AM consulted with their attorney and obtained the arrest of the 6 persons, on criminal charges. This occurred during 2/72 and 3/72. The armed robbery occurred on or about 2/15/72. The activities of Bergelson had thrown Nabcor into financial disaster, including a $150,000 judgment by Celina Mutual Insurance Co., which for the most part was the reason that Nabcor's class action motion in this action appears to have been denied. Nabcor dropped its charges against all 6 after they agreed to pay Nabcor $70,000, all of which was paid. The amount paid was small in comparison to the damages done. FM was totally unaware that Bergelson had 5 meetings with R. L. Berg of the Chevrolet Motor Division during this time, and FM was totally unaware that Bergelson was making offers to GM and GMAC to terminate this action and to terminate Nabcor automobile brokerage business in exchange for financing considerations from GMAC-GM. Bergelson was not authorized to do this and FM had no knowledge tha such activities with GM-GMAC were taking place. FM first became aware of the Bergelson activities in this respect from documents produced by GM in this action. (See description of the substance of the GM documents relating to the armed robbery incident in Part V.)

ALFRED H. MOORE: Moore's testimony parallels the testimony of Donald R. Kurtz, except as follows: Moore retained an attorney during 1968 to determine if Moore should bring suit against Nabcor, because of Nabcor's inability to deliver cars. Then, someone suggested a switch in attorneys, and Moore and about 9 other Nabcor franchisees visited with attorney Zenoff. Moore retained Zenoff on or about 6/11/68 to bring an action against Nabcor. No action was ever brought, and the next time Moore recalls any communications with Zenoff was through the receipt of a letter from him dated 6/15/71 (except there may have been an earlier letter saying Zenoff was still working on the matter). On 10/11/71, Moore attended the meeting in Zenoff's office. Moore had the impression that the purpose of the meeting was to obtain more information to use in an action against Nabcor, and Moore was under the impression that the GM attorneys were to assist the Nabcor franchisees in some way in the action against Nabcor. Moore got this impression from the documents and, possibly, with one or more discussions with Randall of Automobile Brokers, Inc. Zenoff did not advise Moore that he had any dealings with GMAC or GM or that there was any conflict of interest. Zenoff never supplied Moore with a copy of the Wall Street Journal article about Nabcor's commencement of this action against GM, GMAC and others, although the article was mentioned in the meeting. The purpose of the meeting was to have the Nabcor franchisees supply GM's attorneys with as much derogatory information about Nabcor as they could. Zenoff had failed to start the Nabcor action for 3 years, even though he never made any request for money prior to his request for $300, by letter dated 11/11/71. Moore got the impression at the meeting with the GM-GMAC attorneys that they were going to help the Nabcor franchisees in their suit against Nabcor any way they could (although not as to money). Moore took this as substantial encouragement for the Nabcor franchisees to continue their efforts against Nabcor. The fact that 2 GM-GMAC attorneys appeared to speak with the Nabcor franchisees was very impressive to Moore. Zenoff never discussed with Moore the possibility that GM-GMAC or any other persons were or may be liable for the damages suffered by Moore following his purchase of the Nabcor franchise. At the end of the meeting, Moore was led to believe that there would be further communications with the GM-GMAC attorneys about the actual or proposed action against Nabcor. The GM-GMAC attorneys appeared to be taking notes during the meeting.

ALBERT T. OLSON: From the transcript of deposition of 10/7/74. Mr. Olson was the Assistant General Sales Manager for Fleets with the Chevrolet Motor Division, and Director of the Fleet Section (8/66 or 9/66 through mid-spring of 1968) and Chevrolet Zone Manager in the St. Louis Zone (1964 through 8/66 or 9/66 (Tr. 3-4). (Ex. fleet certificate, expiring 12/31/73, plaintiffs' Olson 1-12, GM Doc. 745, plaintiffs' Rock 3, plaintiffs' Karney 6-8, GM Doc. 747, Ex. 5 to Frink Aff't, 1967-72 GM Fleet Lessee Certificates.) The only market analysis by the Fleet Section regarding persons who leased fleet cars was from R. L. Polk statistics which did not separate rental from lease (Tr. 4). The end user was not irrelevant in analyzing the market for fleet sales, but the Fleet Section made no attempt to determine who the end user was (Tr. 5), even though market analysis was one of the functions of the Fleet Section (Tr. 7). Also, the Fleet Section issued the fleet certificate (Tr. 7). If the holder of a fleet certificate reported a delay in shipment or a service problem, the Fleet Section would advise the Division of the problem and hope that the Division took care of it (Tr. 11). During Olson's tenure with the Fleet Section, fleet reserves or allocations were a Divisional activity (Tr. 12). Reserves from total anticipated production were set aside so dealers would be encouraged to provide cars to meet the needs of individual fleet users (Tr. 13). The fleet reserve decreases the number of cars available to dealers for retail resale (Tr. 13-4). There was no policy as to any maximum percentage of production which could be set aside for fleet reserves, and even 100% could be customer is a national account or a local account designation, not necessarily a holder of a fleet certificate (Tr. 115), or a company which would qualify for a fleet certificate (Tr. 115). The box is intended for companies which purchase cars for the conduct and use in their business (Tr. 116). A reseller would not be a customer for whom Buick orders would be marked fleet today (Tr. 116). A fleet purchaser is able to obtain service of his car at any franchised dealer under GM policy (Tr. 116). This is a matter of corporate policy (Tr. 116). There is no corporate policy of rewarding a dealer with additional fleet allocation for excellence in fleet sales performance by the dealer (Tr. 117). It's not a practice or policy, and it's not done (Tr. 118). Rock knows of no corporate policy or fleet plans which prohibit any leasing companies from engaging in the resale of new automobiles (Tr. 118-9). But qualified leasing companies during 1967 through 1970 which were reselling cars would not have been eligible for the fleet plans of GM (Tr. 119). Rock does not know whether resale by a leasing company would affect the availability of the fleet allotment to the selling franchised dealer (Tr. 119-20) from the standpoint of the Fleet Section or the Buick Division when he was there (Tr. 119-20).

C. DAVID ROSE: Rose's testimony parallels the testimony of Donald R. Kurtz, his partner, except as follows: It was obvious to Rose that the meeting with GM-GMAC's attorneys was set up to discourage any of the Nabcor franchisees (10-11 in all) from allying ourselves with Nabcor.

JOHN D. SNYDER (1): From the transcript of deposition of 9/10-11/74. Snyder was employed as new-car manager for Nabcor from 1967-71. (Ex. Snyder 2-8, 11, A.) During 1965 or 1966, Snyder worked for Krause Oldsmobile as new-car manager and knew Robert DiSimone, who at the time was the Pontiac Zone Representative (District Manager) for Krause Oldsmobile. Snyder was in the Nabcor office in Jenkintown, during 12/67, when DiSimone and GM's Speece dropped in and asked Snyder to see FM or AM (Tr. 110-11).

JOHN D. SNYDER (2): During his employment with Nabcor, Snyder may have contacted employees of GM to obtain a fleet certificate for Nabcor (Tr. 54

JOHN D. SNYDER (3): About 2-4 weeks after Speece and DiSimone met with AM and FM met with Belcher, Rohrer Chevrolet stopped delivering cars to Nabcor. Several cars were on order at the time. Rohrer's Fleet Sales Manager, William McIntyre, told Snyder to contact GM's Speece regarding the delayed cars (Tr. 18). McIntyre said that he had orders from the GM Zone not to sell any more cars to Nabcor (Tr. 18). McIntyre said Snyder should talk with Speece. McIntyre told Snyder that 3 cars delivered by Nabcor to Buffalo were traced by GM to Rohrer and Speece said to stop any further deliveries to Nabcor. Hilda Madden, McIntyre's secretary, said she had been instructed by the Zone not to sell to Nabcor (Tr. 22-4) because Speece said that the Zone had stopped the cars (Tr. 27). Snyder's notes of the conversation with McIntrye said: "These cars held up by Mr. David Speece, Chevy Division, General Motors" (Tr. 28). FM told Snyder to call the Zone, and Snyder spoke with Speece and arranged for delivery of the 3 cars, which occurred during 2/68. Also, see other testimony by Snyder under ROHRER CHEVROLET CO. in Part IV.

MARK A. STOLARSKI (1): On 7/15/69, Stolarski ordered a 1970 Corvett from Nabcor broker Badie G. Bodiya, in Detroit, Michigan, and paid a $600 deposit (7018, DF-7013). Stolarski expected the car would be delivered about 4 months after the new model introduction date, throught to be in late September. In late 2/70, Bodiya said he was going to request a courtesy delivery of the car to Shore Chevrolet in Detroit. In early 5/70, Stolarski asked Bodiya to trace the car, to find out why it had not yet been delivered. Nabcor said to Stolarski that the car was built prior to 5/1/70 and Nabcor was expecting delivery very soon. On 5/25/70, Stolarski called Judy at the Chevrolet Zone Office in Detroit, Michigan and explained to her that over 3 weeks was an unreasonable length of time to wait for delivery after a car has been built, and asked for GM's assistance. The Chevrolet Zone Office instructed Stolarski to call Eric Wamsler of Shore Chevrolet. Stolarski called Wamsler and said he was unaware of any courtesy delivery for Stolarski, that the GM dealer accepting the delivery is contacted before the car is built and asked if he will accept the delivery. Wamsler said that no contact with Shore had been made. Stolarski called Nabcor and Nabcor said that Nabcor could not understand the delay but would try to get a replacement car.

MARK A. STOLARSKI (cont'd): Then, on 6/4/70, Stolarski wrote a letter to Mr. E. Cole, President of GM (see letter with chronology and purchase order attached) asking for assistance, with copies to Nader, Nabcor, Bodiya and Stolarski's own attorneys. Within 5-10 days, Stolarski received a letter from Mr. Econ of GM, who said he would forward Stolarski's letter to the proper GM executive for processing. Then, before 5/17/70, Stolarski received a call from Leo Marcus of the GM Chevrolet Division (313-556-5473 or 5226) who said he might be able to help, if he could get the name of the GM dealer from whom the car was originally ordered, the dealer's order number with GM, and a copy of the order. On or before 6/17/70, Stolarski called FM and told him about the foregoing communications with GM personnel. On 6/17/70, Stolarski communicated with Leo Marcus who asked why Stolarski bought the car through Bodiya and Nabcor. Marcus said he did not like the fact that Stolarski bought his Corvette through the Nabcor system. On 6/17/70, Stolarski spoke with FM and told him about this communication with Marcus. On or about 6/26/70, Stolarski was advised that the car had been delivered by GM, to a GM dealer in Elmer, NJ. Stolarski told Bodiya about this event, and Bodiya gave Stolarski money for a one-way flight to New Jersey, for Stolarski to pick up the car. Stolarski got a friend of his to do this, on or about 6/29/70, and the friend drove the car back to Michigan for Stolarski, without any reimbursement from GM, Nabcor or Bodiya.

DALE STRIMPLE (1): Plaintiff General's former principal and officer, Donald Bolling, told plaintiff Strimple and General's secretary, Rose Guido, about the threats of Bob English, Assistant Zone Manager, Chevrolet Buffalo Zone, to Clements-Gillingly Chevrolet made in the presence of Bolling, during 10/67 or 11/67. Strimple called the GM Zone immediately thereafter and spoke to a GM secretary, saying "This is Dale Strimple of Multi-Make Auto Sales" (predecessor to General), and said that he wanted to speak to Mr. Womack. The secretary indicated that Womack was there and left the telephone for several minutes. Then, she got back to the telephone and told Strimple: "Mr. Womack is not in, for you". Strimple tried 1-2 other times to talk with Womack, but with no success.

DALE STRIMPLE (2): On 12/5/67, Strimple ordered his first car from Paul Batt Buick, a 1968 Buick Electra. The customer was pressing for delivery, and Strimple spoke with Batt several times by telephone about the anticipated delivery date. On or about 1/11/68, Batt advised Strimple that the car had arrived from the factory. The following day, on or about 1/12/68, Strimple, Bolling and Shelton Wills went to Batt Buick to inspect the car. They walked around the car to see if it was ready for delivery and if it met the specifications. Strimple saw the name of his company on a piece of paper on the windshield of the car. On or about 1/13/68, when Strimple ca over to accept delivery of the car, Paul Batt's manager, in the presence of Paul Batt himself, said that the factory put the car on a truck and took the

A. L. WILLIAMS (and/or other Citibank officials): Williams was a director of GM and First National City Bank ("Citibank") at the same time, during 1967-68. Williams will testify on his knowledge about Nabcor and describe what matters he handled concerning Nabcor in connection with either GM or Citibank. Also, Williams or other Citibank officials will testify as to the business relationships between GM and Citibank during 1966-75, including (i) compensating balances and deposit levels; (ii) loans and other credit lines; (iii) rules or policies of Citibank restricting indirect (customer) financing to franchised new-car dealers only and limiting the number of used cars for which a franchisee may obtain indirect financing from Citibank; and (iv) floor-plan financing programs. (Citibank's participation in the conspiracy will be discussed at length in a subsequent pre-trial brief.)

SHELTON C. WILLS: Wills has an uncertain interest in plaintiff General Auto Sales & Leasing and is the brother-in-law of plaintiff Dale Strimple. Also, he is an employee of GM. On 1/12/68, Wills went over to Paul Batt Buick to inspect the 1968 Buick Electra after it had been delivered by GM. Wills checked the Buick against the specifications of the customer's order, including color, and the car met each of the specifications. Strimple and Wills went back to Paul Batt Buick the next day to pick up the car, but the car was gone. Mr. Collins, the Sales Manager for Paul Batt, told Wills and Strimple that GM took the car back and that Collins guessed that it had something to do with the new safety law, and Collins said he would order another Buick for General. Collins said that the factory put the Buick on the back of a truck and hauled it away.

ARNOLD W. WONSEVER: Wonsever is the founder and President of United Auto Brokers ("UAB"), located in Brooklyn, N.Y. UAB is a non-franchised automobile broker, which works with franchised dealers as a "bird-dog". In this way, UAB has met less opposition than Nabcor. UAB's business depends on the continued cooperation of local dealers. If they refuse to deal with UAB, then UAB would not be able to do business. Wonsever will testify about the troubles UAB has had in obtaining cars and GM's interference with his business. Also, Wonsever will testify that, in 1969, UAB and Ralph Burke Oldsmobile went into a 50-50 deal called UAB Leasing Systems, Inc., which was issued a fleet certificate by GM and which received GMAC approval for financing of leased cars. Also, Wonsever will testify that UAB was turned down by GM for a fleet certificate and has another application pending for months. The fleet certificate is important because franchised dealers believe that the holder of the certificate is authorized by GM to buy cars at wholesale prices. Also, Wonsever will testify that Walter Englert, Fleet Sales Manager of Midtown Chevrolet-Pontiac Division of GM, after visiting UAB's place of business, refused to do business with UAB because UAB's prices were too low, around $70 over tissue. Englert said that UAB could do business with Midtown only at $150. Also, Wonsever will testify that Circle Buick Division of GM, located at 1731 Broadway, New York, N.Y., would not do business with UAB. UAB did not have many warranty problems because the UAB customers bought the cars directly from the participating GM dealers and took their cars back to such dealers for needed warranty work.

Sloane continued to deal with Nabcor.

(2) Anthony Maiorana (cont'd): During 7/71, FM and AM went to James Buick to pick up a 1972 Buick being rented by Nabcor from Mainline Fleets, Inc. and they met James Cataldi. FM was told by Cataldi that Cataldi was the owner of James Buick. Cataldi said he would sell to Nabcor at $65 over tissue. Cataldi said he was out to sell a lot of cars. About 2-3 days later, Cataldi said he was very willing to sell cars to Nabcor, but he just got the dealership and he is afraid of his position with GM. He cannot sell to Nabcor. He said he had checked with the factory to order cars for Nabcor and GM said they know Nabcor is selling cars. GM said not to get involved with Nabcor.

(3) Frank Maiorana: James Cataldi is a long-time friend of FM, and he knew during the 7/71 meeting that Nabcor was selling cars. Same testimony on the 7/71 meeting with Cataldi. A few days after the meeting, he said that he just got his dealership, that he had checked with the GM Zone, which said he should not sell to Nabcor. He could lose his dealership if he sold cars to Nabcor.

Documents: Pltfs: 10/1/70 note, Mainline lease agreement.

KELLER CHEVROLET:

(1) Dale Strimple: During early 1968, Strimple visited Keller Chevrolet and talked with owner Roger Keller about buying cars. Keller said he had heard all about Nabcor and General from the Buffalo Chevrolet Zone. Also, he mentioned that he had seen the BADA Bulletin dated 9/29/67 on Nabcor, General and other Nabcor franchisees. Keller said he wanted nothing to do with us. Keller also said that he knew that we did not have a fleet

certificate. Also, see ¶ 3 under BOB BAIN CHEVROLET.

Documents: BADA Bulletin dated 9/29/67.

KLINE PONTIAC: A co-conspirator in the Albrecht sense - unwilling member of combination. See the GM docs. showing GM's denial of the fleet allotment and manufacturing preference to Kline because the cars were ordered for Nabcor, which is not an eligible fleet account; GM refuses to give fleet allotment unless the dealer names his fleet account, which Kline refused to do at first; all Nabcor orders are to be processed by GM as regular (retail) orders which count against Kline's regular (retail) allotment. Nabcor's orders are being held up by GM. A car built for Nabcor was, without Kline's knowledge, diverted by GM to the Zone warehouse (GM docs. 186-8, 203).

Documents: GM: 101, 133, 172-104, 220-1, 806-8, 810-11.

(1) Frank Maiorana: FM had telephone conversation with Percy Kline, Sales Manager, on 8/20/69, who agreed to sell Pontiacs to Nabcor at $75 less 1%. Kline sent a letter to FM dated 8/20/69 (20044). On 9/18/69. Kline sent a letter to Snyder of Nabcor to give more specific pricing informa (20042). FM advised Kline at the outset that Nabcor was selling cars. From 10/14/69 to 12/21/71, Kline sold 30 Pontiacs to Nabcor.

Documents: Pltfs: 5907-8, 20042, 20044, deal folders.

WALTER H. KOLLMAR PONTIAC:

(1) Anthony Maiorana: Prior to 8/68 incident (discussed below), AM spoke with Mr. Kollmar who said that he wanted to sell cars to Nabcor but he was afraid of the factory. Kollmar said he would sell cars to Nabcor if he could get the factory's approval, but everything he did with Nabcor would have to be with factory approval.

obtained a fleet number. Nash said Nabcor would not fill out the form because Nabcor in fact was reselling the cars instead of leasing them. Nash talked him into delivering the car. He said to Nash to take the form anyway. Nash never filled it out or returned it to Krause. Snyder was working for Krause at the time of this incident.

(3) Jack Snyder: Snyder worked for Krause during 1965-6, as Manager for new car sales (Tr. 9). During the summer of 1969, Krause suddenly quoted car prices of $150 over tissue (Tr. 77). Mort Krause told Snyder (while Snyder was employed with Nabcor) that there was a meeting of dealers including Krause (Tr. 77). The dealers shared a common computer firm which did financial analyses for the dealers, according to Krause. The firm was located in the Berkeley Hotel in Philadelphia. The dealers were advised by the firm in a meeting to discuss the dealers' financial status that the costs of doing business of the dealers were run through a computer and the dealers decided each of them had to have $150 dollars to sell Nabcor anything (Tr. 77). Also, Snyder spoke in person with Harold in Krause's office, who said that Krause had been turned down by the Zone for the $50 rebate on car sales to Nabcor (Tr. 78, 178).

(4) See testimony under POLLINO BUICK for additional testimony on the price fixing conspiracy by the Philadelphia area dealers, which was part of the overall conspiracy against Nabcor and its franchisees.

Documents: Pltfs: 6089, 6107, 6109, 6113, 20053-6, deal folders.

KUTNER BUICK, INC.:

(1) Frank Maiorana: Nabcor bought 15 cars from Kutner from 8/19/66 to 6/26/67. On 7/12/66, Jerome S. Kutner sent a letter to Nash,